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UPON THE

ROYAL PREROGATIVE IN ENGLAND

ESPECIALLY SINCE

THE ACCESSION OF THE HOUSE OF BRUNSWICK.

Inaugural-Dissertation

zur

Erlangung der Doktorwürde

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Ernesti Georgi Friderici Grisanowski,

medicinae et philosophiae doctoris,

cuius ingenium magnum et mores nobiles semper in animo grato commemorat,

memoriae

hanc dissertationem reverenter auctor dicat atque dedicat.

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INTRODUCTION.

An attempt has been made in the following pages to trace the rise and growth of the royal prerogative in England, and to examine to some extent its sources of influence and power at different periods of its history. But more especially has the writer had in view an examination of the extent of the regal authority since the accession of the house of Brunswick. In the ancient Germanic tribes the form and principle of government appear to have been essentially republican. After the occupation of Britain by the Angles, Saxons and Jutes, and throughout the Anglo-Saxon period, we have a history of petty kingdoms ruled over, for the most part, by constitutional monarchs, elected by the Witan. The royal authority was limited in extent, and even at times gave way, and became reduced to a shadow, before the power of the national assembly. At other times the kingdoms were virtually governed by oligarchies composed of powerful thanes, or, as sometimes happened, a single thane might be the actual ruler. After the conquest of England by the Normans, constitutional government at once gave place to personal rule and absolutism; and continental feudalism, but in a modified form, became established in England.

On the Continent it seems to have been the decay of the feudal system that first exalted the royal authority; but in England this was due in great measure to the changes wrought by the Conqueror in the system itself, which rendered absolutism and feudalism no longer incompatible. The principle of the feudal system was opposed rather than favourable to the principle of

absolute monarchy, and on the Continent it was only when the former had begun to degenerate that the latter was set up and eventually supplanted it. In England, however, it was otherwise. There absolutism prevailed centuries before it appeared in France or Spain, and co-existed with the feudal system. But it was not continental feudalism, but feudalism as modified by William and his Norman successors. The absolutism of the Norman kings gave way in time, owing to the irresistible power of the feudal magnates, to parliamentary control; but on the overthrow of the kings of the house of Lancaster absolutism was again established, and England took her place among the absolute monarchies of Europe.

Despite the bold assertions of many writers on English history to the contrary, there appears to be no evidence, no authentic proof, of the existence of a Norman parliament, or of an estate of the realm properly speaking, previous to Magna Charta. There is nothing to show that the right of assent to legislative measures and royal ordinances, the right of imposing taxes and of voting subsidies, was even shared by the *commune concilium*, the *concilium ordinarium*, or the *magnum concilium*, or that these assemblies possessed any of the rights and privileges of the Anglo-Saxon witenagemôte. Even in Magna Charta no provision was made for the convening, at stated periods, of a national assembly to deal with the grievances of the nation: on the contrary, that „keystone of English liberty“ left the king the actual ruler and legislator, and in the former capacity he continued with intermissions down into the present century.

The parliaments of the thirteenth and fourteenth centuries and early part of the fifteenth were in many respects identical with those which still sit at Westminster; but there are important points of difference. The parliament of to-day is in the broadest and fullest sense a ruling body. The anti-Tudor mediaeval parliaments allowed the king to rule within certain limits. But as they grew stronger they told him what he might do and what he might not do, and when he stretched prerogative too far, they refused to grand him subsidies, and in

extreme cases they overthrew him. The two great crises of the seventeenth century broke through the monarchy of Divine right and substituted therefor a monarchy of contract. The promise of parliamentary government at the Revolution, however, was not to be fully realized till our own time.

The contemporary records and documents show, contrary to the generally accepted teaching, that during the century from 1727 to 1827 the kings of the house of Brunswick were rulers in England as well as in Hanover. During the reign of George II. the personal will of the sovereign was a dominant factor in the state. Under his immediate successor the personal influence and authority of the crown still further increased, and during the administration of Pitt became firmly established. It was not until the closing years of the reign of George IV. that the remnant of independent kingship may be said to have actually expired. England is still governed by a cabinet, but by a cabinet no longer responsible to the sovereign, but to parliament and the people. The commons, the lords, and the crown must each and all bow to the popular will when constitutionally expressed, for the silent and powerful growth of democracy has for good or evil gradually absorbed into itself the ultimate decision of the destinies of the nation.

With the signing of the Roman Catholic Emancipation Bill by George the Fourth on the 14th of April 1829, the long struggle for the complete subversion of the royal prerogative may be said to have finally come to an end. Since the Norman Conquest, or for nearly eight hundred years, attempts without number had been made to confine the power of the crown within its ancient limits. By gradual encroachments the rights and privileges for ages inherent in the people had passed from them to their warlike leaders and had become centred in the person of the sovereign, who thus in time became, what the nation or tribe had formerly been, the source from which all supreme power in the state emanated. It is only within our own time that the people have regained full possession of their ancient rights and liberties.

The fundamental notion of regal supremacy in England does not seem to have been originally derived from the Germanic tribes, for the same theoretical and ideal conception of kingship and the kingly office is seen in the polity of all European nations which arose out of the ruins of the Roman Empire.[1]) After the Norman Conquest the king was (and still is theoretically) the absolute ruler,[2]) the supreme judge,[3]) the sole proprietor of the land,[4]) the commander-in-chief of all the forces of the realm,[5]) the fountain of justice and honour,[6]) indeed the source of all power and authority in the state. He is also the representative of the kingdom touching all foreign powers; he can make peace or war or ratify treaties at his pleasure.[7]) Finally, the king is perfect and consequently incapable of doing wrong,[8]) and never dies.[9]) Attempts to practically enforce these theoretical rights have everywhere at different times been made, and have ever met with greater or less resistance. In most instances the issue has been on the whole favourable to the crown; in some the resistance has resulted in its final subversion.

It will first be necessary to examine briefly the extent of the royal authority during the Anglo-Saxon period, and then to follow the growth and development of the more important attributes of the absolute sovereign power after the Norman Conquest.

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1) Although the monarchical theory of modern Europe appears not to have had its origin among the ancient Germans, but to have been derived from the Empire, it is none the less true that many of the German communities were under kings (especially the tribes that established themselves in the Empire), but their power was not unlimited or arbitrary (Tacitus, *de Mor. Germ.* 7, 10, et seq.). Arminius, despite his great services to his countrymen, was put to death for assuming (*regnum affectans*) royal dignity (Tacitus, *Annal.* II. 88).

2) Blackstone, I. 251.

3) *Ibid.* I. 250, 266.

4) *Ibid.* II. 51, 59, 60, 415.

5) *Ibid.* I. 262—264.

6) *Ibid.* I. 271; iv. 2.

7) *Ibid.* I. 252, 257.

8) *Ibid.* I. 246.

9) *Ibid.* I. 249. *Vide* Appendix, A. & B.

The Anglo-Saxon Period.

Under the Anglo-Saxons the crown was elective but the chieftain,[1]) cyning, cyne-hlâford, duke or king was limited in his authority by ancient usage and the peculiar privileges of the tribe or nation to which he belonged. He was further dependent upon his personal qualities for the power he possessed and his ability to retain it. The election took place in the witan (gemôte, witenagemôte), or national assembly of freemen, in which the supreme authority of the nation resided. The office was not hereditary, according to the rules of lineal descent, though it gradually became a hereditary family right, the king being usually chosen from a particular family. Illegitimacy was no ground of exclusion, and any member of the chosen family was eligible as circumstances might determine, the younger line often being preferred to the elder.[2])

The people (witan) not only possessed the right to choose their king, but they likewise possessed and exercised the right of deposing him for breach of his obligations or violation of his oath.[3]) According to the laws ascribed to Eadmund subjects were commanded to „Swear such fealty to King

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1) It was not for some time after the settlement of the Jutes and Saxons in Britain that they adopted the title of „king", Aella of Sussex (514—519) being the first who styled himself „Cyning" (Baeda, *Hist. Eccl.* I. 15; *Sax. Chron. anno* 449, 495). In Northumbria, East Anglia and Mercia the Angles were established many years without any common head (Malmesb. Hunt. Westm.; Allen, *Prerog.* 165).

2) Out of nineteen successions to the throne in the united Saxon monarchy, nearly one-half were irregular. Aelfred takes precedence of his elder brothers, Eadward the Elder of his cousin, and Aethelstan of his legitimate brothers.

3) Aethelred II., after being dethroned and banished by the Danes, was taken back by his subjects in 1014 upon a pledge of better conduct, and a

Eadmund as a man owes to his lord.“ On the other hand an oath in return was expected from the king at his coronation to maintain them in all their rights and privileges. Allegiance was thus held to be conditional, and if the king violated his oath, the subjects were released from the allegiance they had sworn.[1])

The personal command of the army was entrusted to the king, and he also appointed the other leaders. The power, however, of deciding as to war and peace, and the regulating of the distribution and equipment of the contingents rested not with him but with the people.[2]) In later times, when the national militia and the personal retainers or vassals of the king became more or less fused, the popular assembly still claimed and asserted the right of giving or withholding its consent in matters touching war.[3])

The witenagemôtes also deliberated upon legal matters, maintenance of the peace, police regulations, ecclesiastical affairs, and taxation.[4]) The ealdormen appear at first to have been elected by the witan, or the king and witan;[5]) but in later times the right to appoint and depose them rested with the king.[6]) The shir-gerêfas or sheriffs were a free appointment of the king, who could also remove them for cause.[7]) Prior to the Norman Conquest the power of the great thanes in both the national and county meetings had become paramount at the

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promise „to be towards them a faithful hlâford“ *(Sax. Chron.* 1014). Sigeberht, king of Wessex, was dethroned for his illegal conduct by sentence of his witan *(Sax. Chron.* 755). Beornred, king of Mercia, was deposed and Offa elected in his place. (Westm. 758).

1) The forms of withdrawing homage, fealty and allegiance, were observed at the deposition of both Edward II. and Richard II. *(vide* Appendix C).

2) Athlr. VI. 32. sec. 3.

3) Gneist, *Const. Hist.* 15, 16.

4) The right of direct taxation was at first unknown to the Anglo-Saxons. Under Aethelred II., with the consent of the witan, £ 10,000 *(Danegeld)* was raised, with which he bribed the Danish hordes. This tax became permanent, and lasted till the reign of Henry II.

5) Kemble, *Saxons*, II. 126.

6) Gneist, *op. cit.* 49.

7) Athlr. II. 26.

expense of the lesser thanes and the royal power.[1]) After the Conquest the power of the witenagemôte was in its turn reduced almost to a shadow, and instead of being the representative assembly of the people or thanes, became the *Consilium Regis*.[2])

Among the German tribes there appear to have been, according to Tacitus,[3]) courts of justice before there were kings. Capital offences were tried in the assemblies of the nation; and questions affecting the life or death of any member of the community were there decided.[4]) In Anglo-Saxon times, even after the king came to preside over the deliberations of the court in person, the right of pronouncing the sentence still resided in the assembly.

After Christianity had been adopted by the Saxon monarchs, with the consent of the witenagemôte, the king became the protector of the Church, and exercised the right of appointing bishops as well as sanctioning the resolutions of the ecclesiastical councils.[5]) In course of time matters affecting the external institutions of the Church were sanctioned by the king and national assembly, and in the tenth century the question of monasticism was repeatedly deliberated upon in the witan.[6])

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1) As seen under Aethelred II., Cnut, and especially under Eadward the Confessor.

2) Until after the Norman Conquest the legislative power appears never to have resided in the monarch alone, but in the witan, or in the witan and king jointly. Ine, king of Wessex, in 688 makes seventy-nine laws at his witenagemôte „with the advice of his prelates, ealdormen, wisemen, and clergy". So Eadgar, in 971, long after the union of the kingdoms, speaks of the laws which had been made by him and his witan *(Ll. Sax.* 80).

3) *De Mor. Germ.* § 12.

4) By the Saxon laws private warfare was in certain cases allowed. „Every man", says Aelfred, „may fight for his Hlâford if his Hlâford be attacked; and so may a Hlâford fight for his man" (Alfr. 42). A man may also fight for his natural-born kinsman *(Leg. Edw. Conf.* 12).

5) Lingard, *Anglo-Saxon Church*, I. 89; Palgrave, *English Commonwealth*, I. 173, 174. „In the time of Wilfrid and Dunstan the king asserted a control over the resolutions of the Church, and over the right of appointing and dismissing prelates, against Rome as well as against the ecclesiastical councils at home". (Gneist, *op. cit.* 31).

6) Kemble, II. 189. By the Kentish law the Church, archbishop, and bishop, in case of theft, were exalted above the king. If any one stole from a

Among the ancient Germans the territory possessed by the tribe was considered as the property of the community, and was parcelled out among its inhabitants according to their rank.[1]) In the early Saxon times the land of the community never belonged to the chief. Conquered land was always divided among the leaders and their followers, part being given to the king and part being reserved to the state. This custom prevailed till allodial possessions were supplanted by feudal tenures. The king had the usufruct of portions of *ager publicus*, or folkland, but he had no exclusive right to alienate it.[2]) At first the latter could only be granted away (bôcland) by the witan; later, by the king, but only with the assent of the national assembly.[3])

The Anglo-Norman Supremacy to the Close of the Middle Ages.

In the Anglo-Saxon period, as already stated, the crown was elective, but after the Conquest it gradually ceased to be regarded as a direct grant from the people, though the form of election, as often happens, long survived the reality of a choice.[4]) The Norman Conqueror and his successors retained all the powers and revenues of their Anglo-Saxon predecessors

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church he had to pay twelve times the value of what he had stolen, from a bishop, eleven times, and from the king nine times the value (Athlb. I. 4. 9; Athlr. VII. 7). By the Mercian law the compensation for the king *(Weregeld)* was 7200 shillings, or six times that of a *thane*, and thirty-six times that of a *ceorl*.

1) Tacitus, *de Mor. Germ.* § 26.

2) Kemble, II. 42—87.

3) „Kings were the leaders of the people, not the lords of the soil" (Palgrave, I. 62). Cnut was the first prince that styled himself in his laws „King of all England" *(Eallas Englalandes)*.

4) William, after he reached London, underwent the ceremony of an election. Rufus, Henry I., and Stephen were raised to the throne by their followers, the two latter being usurpers. Henry II. succeeded in virtue of a treaty with Stephen, which was ratified by the barons. Richard I. took the crown by descent and was the first who took it without the form of an election. John obtained it by election after an interregnum of nearly two months. Until the

and, as supreme feudal lords over all the land, added to these the newly-acquired feudal rights.[1])

As the Norman military system became firmly rooted in the state, the royal prerogative of deciding the question of war and peace became firmly established. The exclusive right of fortifying castles became likewise a royal privilege.[2]) The king could now claim the right of personally summoning the thanes, since every vassal and under-vassal of the crown had taken the military oath of fealty to the king's person. This oath was binding for both his possessions at home and abroad, *intra et extra regnum*.[3]) The judicial powers of the king were no longer formal and supplementary as during the Anglo-Saxon supremacy; he was now henceforth the „fountain of justice" and the supreme judge.[4]) William issued ordinances and decrees,[5]) and by means of his arbitrary administrative system punished every infraction of them by fines (amerciaments) [6]) or sequestration. By these means the royal will received the force of the older resolutions of the national assembly,[7]) and absolute, purely personal government

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time of Edward I. usually an interval of a few days elapsed between the death of the king and the accession of his successor. Since the accession of Edward I. in 1272 there has been no interregnum, save where the order of succession was broken by changes of dynasty.

1) Until the death of Henry II., a century later, there was a continual revolt on the part of the great vassals against the English feudal lordship.

2) Gneist, *op. cit.* 128.

3) Charta, Will. I. 3, c. 2; Stubbs, *Charters*, 83, 84.

4) Under the name „*Curia Regis*" there existed a wide judicial authority residing in the king of personally appointing and constituting the court in important cases, the king often sitting in person and administering justice himself. The court thus constituted became the forerunner of the *justiciarii* of later times (Gneist, *op. cit.* caps. 11, 16, 17).

5) Will. I. 3; Stubbs, *Charters* 34.

6) Madox, *Hist. Exch.* I. 526, II. 65, 66; Leges Hen. I. c. 13.

7) During the Norman period there are no signs of a legislative assembly. One hundred years after the Conquest, under Henry II., the first beginnings are seen at the assizes of Clarendon and Northampton, *(Peers' Report*, I. 36, 42). Stubbs speaks of the „nominal" character of the assizes, in which only the theory and form of a national assembly are retained (*Const. Hist.* I. 356; *Charters*, 17: *vide* also *Hist.* I. 276; *Charters*, II. 23; Gneist, *op. cit.*, 207, 208). The principal authorities, with the notable exception of Gneist, insist more or less on permanent royal councils at this period (*vide* Parry, *Parl*, 10; Hallam, *Middle Ages*, II. c. 8, note 13; Stubbs).

became established.[1]) The Conquest was followed by a great and immediate increase in the property and revenues of the crown, due to wholesale confiscations, extensive reservations, excessive taxation, and fines without number.[2])

Thus the government had become firmly consolidated into a single, and that too an absolute monarchy; but as the Conqueror had won the throne with the support of the ecclesiastical estates, he was now compelled to make some concessions to this almost sovereign power within his dominions.[3]) The first three kings of the Norman period remained virtually masters of the Church, and exercised the ancient rights of the Anglo-Saxon king touching the appointment of prelates and the royal ratification of the resolutions of the councils.[4]) Under William Rufus the estates of the Church were brought into the feudal system, i. e. granted to be held under the same laws of tenure as the baronies and knights' fees, with full burden of the feudal service.

By the centralizing influence of Duke William and Henry I. the conquered people and their conquerors were after a lapse of a century welded into one homogeneous nation, a monarchy at once feudal and national. The vigorous police system (frankpledge), and the development of the Exchequer into a department

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1) „Hence the Norman King became possessed of an arbitrary penal jurisdiction, such as probably no other potentate of the Middle Ages ever possessed" (Gneist, *op. cit.* 162—164). Brougham thinks the Conqueror was not absolute, and holds to the idea of a Norman parliament.

2) The inheritance of Edward, the possessions of the family of Godwine, and the remainder of the old folkland were immediately seized as royal demesnes. The estates of the crown were further increased by the frequent lapsing of fiefs through escheat and forfeiture. The royal desmesnes are given by Cowell and others as 1422 manors, 30 chases, 781 parks, and 67 forests (Ellis, *Intr.* I. 228, 229). The crown revenues during this period were derived from many sources, but chiefly from amerciaments, reliefs, wardships and marriage, and from the *auxilia, scutagia* and *tallagia.*

3) They were granted a separate ecclesiastical jurisdiction, the Peter's pence etc. Under Henry I. the investiture of the archbishop with the ring and staff was abolished.

4) Stubbs, *Const. Hist.* I. 374. At the close of the twelfth century the bishops were elected by the chapters and confirmed by the archbishop; but the royal consent to the choice was still indispensable.

for financial administration and into a royal court,[1]) both contributed to this end. Under the energetic Henry II. the institution of itinerant justices or commissioners attained a definite form.[2]) In this reign the Court of King's Bench, under the general name of *Curia Regis*, probably had its origin.[3]) With the Assize of Clarendon in 1164, and that of Northampton twelve years later, to which a number of lesser crown vassals were summoned, the idea of a legislative power in the nation temporarily revived, but a whole generation passed before another one was held.[4])

Under Henry the mischief done in the reign of Stephen was more than repaired. He weakened the power of the barons, protected the mass of the people, and established order throughout the kingdom. Under him the power of the crown was almost as great as it had been under his grandfather. He was not only king of England, but lord of Ireland, and ruler of one-third of what is now France. In extent of territory and in amount of revenue, as well as in ability and energy, he was the greatest prince of Western Europe. Although his latter years were full of vicissitudes, and he died defeated and broken-

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1) Brought to its completion under Henry II. The Grand Jury (twelve lawful men in every hundred and four in every township), to present or accuse criminals before the king's judges, owes its origin to the Assize of Clarendon, 1166. The Lateran Council of 1215 declared that trial by ordeal was unlawful, and in place of the ordeal the Petty Jury of modern times was sworn to decide upon the guilt or innocence of persons accused by the Grand Jury.

2) Foss, *Judges*, I. 174. At the Assize of Northampton, 1176, the counties were divided into six circuits, and three *Justiciarii* appointed for each circuit.

3) By a decree of 24 Henry II. five commissioners were appointed „who shall not journey through the land, but shall hear pleas at Court" (Bened. Petr. 266, A. D. 1178; Gneist, *op. cit.* 229).

4) „Assize of Bread", 5 John, 1204.

„Henry II. is the first of the three great kings who have left on the constitution indelible marks of their own individuality. What he reorganized Edward I. defined and completed. The Tudor policy, which is impersonated in Henry VIII., tested to the utmost the soundness of the fabric; the constitution stood the shock, and the Stuarts paid the cost of the experiment. Each of the three sovereigns had a strong idiosyncracy, and in each case the state of things on which he acted was such as to make the impression of personal character distinct and permanent" (Stubbs, *Const.* I. 446).

hearted, it might seem that he had put the royal power in England beyond the possibility of dispute.

Richard reaped the benefits of his father's good government; but he himself was no statesman, and he neglected his people and put them to heavy expense for his wars and his ransom. Yet during this reign numerous charters conferring extensive privileges were granted to cities and towns. The system of inquest by juries was maintained and applied to new purposes, and the power of the sheriffs was reduced by a rule that no sheriff should act as a judge in his own county. By an ordinance of 1194, the office of coroner was created, which provided that in every county three knights and one clerk should be elected to keep the pleas of the crown *(placita coronae)*.

John lacked the martial qualities of his brother and was destitute of political sense. From the very beginning of his reign he governed badly, and thus prepared the way for the momentous events of 15th June 1215. By his cowardice, harshness, cruelty, avarice, and sensuality he estranged successively all classes of his subjects. In addition to this he was so rash as to engage in a conflict with the two ablest and most powerful statesmen of the time, Philip Augustus and Innocent III., a conflict which resulted in the loss of the French provinces and in his own degradation. Thus by his own acts of folly the king, finding himself almost deserted, was forced to accept the articles offered him by the barons, and on the 15th June 1215 he affixed his seal to the Great Charter.[1]) By this act of John, the foundation

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1) The provisions of Magna Charta (which consists of sixty-three articles) applied to the commons as well as to the nobles and clergy, and directed that its benefits should reach the lower tenants. Principal provisions: — (1) Ratification of Henry's charter, and confirmation of the freedom of election already granted to the clergy. (2) The regulation of feudal dues and obligations, and reduction of the *relevia* to fixed payments. No *scutagia* or *auxilia* (i. e. extraordinary aid) were to be levied without the consent of the tenants-in-chief (except in the three ancient cases of „honour and necessity"), and for this purpose only was the king bound to summon a common council of the realm. (3) To London, and all other cities, boroughs, and ports, were guaranteed all their ancient liberties; and touching the *auxilia (tallagia)* of the city of London, the same rule was to apply as in the case of the aids of the feudal vassals.

of the English constitution may be said to have been completed. „The Magna Charta“, says Hallam, „is still the keystone of English liberty. All that has since been obtained is little more than a confirmation or commentary; and if every subsequent law were to be swept away there would remain the bold features that distinguish a free from a despotic monarchy.“

By Magna Charta legal limits were set to the exercise of royal sovereign rights, and in extreme cases the suspension of

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Merchants were to have their trade and traffic secure, and free from all arbitrary impositions and tolls. (4) Civil actions were to be heard in some fixed place, and the civil assizes were to be held once a year in every county by itinerant justices (hence arose the second court of common law, known as the Court of Common Pleas, which continued to exist until the year 1873). None were to be appointed justices who were not versed in the law of the country, and arbitrary fees exacted for judicial proceedings were to cease. No *Vicecomes*, no constable of a castle, or local bailiff of the king was henceforth to exercise in his own right criminal jurisdiction. It was provided that no man should be punished without due trial. „No free man shall be taken, imprisoned, or damaged in person or estate, save by the judgment of his peers *(judicium parium)* or the law of the land“ (Art. 39). This clause contains the germ of the right to trial by jury, and of the right to speedy trial given by the Habeas Corpus Act. (5) For the condemnation of any to an amerciament, a co-operation of the „good men“ of the neighbourhood was necessary. Fines were to be proportioned to the offence, so as not to take from the freeholder his land, from the merchant his merchandise, or from the villein his wainage. (6) All forests made since the accession of John were to be disforested. In every county twelve knights were to be chosen to inquire into and report on the evil customs in force in the forests, and all such customs were to be abolished. One system of weights and measures was to be established throughout the kingdom. Many clauses refer to all the freemen, and a few were directly framed in the interest of the villein (e. g. his wainage was not to be taken by way of fine). The charter concludes with a provision intended to secure its observance. The barons were to choose twenty-five of their number to conserve and guard the charter. For any infringement of its provisions any four of the conservators might demand redress from the king and, failing this, were authorised to summon the *communa* to put constraint upon him by seizing his lands and castles, or by any other means, saving always the liberty of himself, his queen, and children. The charter received its first confirmation (1 Henry III.), at Bristol, 11th Nov. 1216; but the clauses dealing with taxation (Arts. 12, 14), the great council of the realm (Art. 61; subsequently adopted, 1264), and the forests (Art. 47) were omitted. With some omissions and additions it was confirmed for the third time in 9 Henry III., 11th February 1224, and in this form it afterwards took its place among the statutes of the realm.

the personal government was demanded. The intention was not to subvert the personal authority of the king, but to secure the country against the arbitrary exercise of the royal power by restricting it within legal limitations.

During the long reign of Henry III. the first attempts at a goverment by the estates of the realm appear.[1]) Passing over the confused and undecided struggle between the incorrigible monarch and his foreign favourites on the one side, and the great barons on the other, we reach the climax at the council at Oxford, 11th June 1258. At this parliament[2]) a permanent committee of fifteen to act as a sort of regency was chosen.[3]) The committee for a time exercised the powers of royal government, and demanded first of all the faithful observance of the charters; next, that the chief justice, chancellor and treasurer should be elected annually; thirdly, that parliament should be held three times a year; and, lastly, that the royal castles should be placed in the hands of Englishmen.[4]) After the overthrow of Simon de Montfort and the final conclusion of peace, the king took back the appointing power; and such of the rules laid down in the provisions of Oxford as were not at variance with the royal prerogative, were confirmed by him with the consent of parliament. During this reign the right of the crown vassals to assent to the imposition of *scutagia* and *auxilia* was established by many precedents.[5]) The personal will of the king, however, was still the dominant factor in the state, and it was only his constant pecuniary embarrassment which compelled him to frequently summon in council the greater vassals of the realm.[6])

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1) No estate of the realm properly speaking existed prior to Magna Charta (*Peers' Rept.* III. 87, 97, seq., 109, seq., 254).

2) Afterwards called the „Mad Parliament".

3) Stubbs, *Const. Hist.* II. 77.

4) *Peers' Rept.* I. 101—127.

5) The omission of articles 12 and 14 of Magna Charta, which dealt with the grant of *scutagia* and *auxilia*, was compensated for by an effectual practice of grant and refusal (Gneist, *op. cit.* 267).

6) Henry III. was in such constant want of money that he was forced to make concessions. In 1237 he proposed that the great council should not only

The greatest gain of this period is seen in the advance of the greater and lesser crown vassals and freemen towards a constitutional position in the state. Deputies from the shires and towns were henceforth to participate (though at first in a modest way) in the deliberations of the nation. Thus the epoch at which the representatives of the commons becomes distinctly manifest was reached.[1])

Under Edward I., a man of great energy, and the greatest monarch since Aelfred, confidence was again restored in the monarchy. The constitutional importance of this reign cannot be over-estimated.[2]) In it was laid the foundation of the system

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settle the best manner of collecting an aid, but should also appoint a commission to see that it was properly expended. In 1238 he offered to submit himself to the decision of a commission of fifteen elected to reform the kingdom. In 1254 the queen and his brother acting as regents during his absence in Gascony, summoned to a great council at Westminster four knights chosen by each shire. This perhaps was the first occasion on which representatives of the counties sat in a great council. Shortly after his dispute with the pope, John assembled a council at St. Albans to which were summoned four representatives from each of the townships on the royal demesne. From this it appears that towns, and not shires, were first represented at a council of the king. Still later, John called another council, and issued a summons directing the sheriffs to send four discreet knights from each shire to speak with him concerning the affairs of the realm, but we do not know whether this council ever met.

1) In the participation in national affairs of the lesser crown vassals and freemen is seen the beginning of the House of Commons. Prior to this period lesser vassals of the crown had been summoned a few times to deliberate touching extraordinary aids or money grants (Parry, *op. cit.* XIII.), now, however, they were called to deal with the business of the nation. In 1258 the lesser vassals were invited to choose two knights in order that these shall appear to deliberate upon the *auxilia*. In 1261 Simon de Montfort summoned three knights from each county to an assembly at St. Albans to deliberate upon „state business“, while the king invited the same deputies to a council at Windsor. In 49 Henry III. (20th January 1265), de Montfort, in the king's name, convoked a parliament at London, to which were summoned in addition to the prelates and greater temporal vassals, two knights from every county, from the cities and burghs two citizens, and from the Cinque Ports each four men (*Peers' Rept.* I. 141—145; Rymer's *Foedera*, I. 449).

2) Lord Chief Justice Hale states that in the first thirteen years of Edward's reign, English law made more progress than in all the centuries from that time until his own day (*vide* also Blackstone, IV. 425—427).

of legislation, taxation, and judicial procedure. The machinery of the central administration was perfected, and the right of the crown vassals to participate in the government was definitely conceded and acknowledged.[1]) The king still summoned the lords, knights and burghers at his discretion, and still initiated legislation and issued decrees on his own authority; but in the latter part of the reign the constitutional right of the estates to vote taxes was established, and their advice was asked in the affairs of the nation.[2])

A judicial system with distinct courts of law was now definitely established.[3]) Constables and justices were appointed,

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1) During the reign of the three Edwards a series of statutes were enacted by the king with the assent of the estates of the realm („By the King by the advice of his Council and the assent of Parliament"). Statutes passed by the three estates could no longer be repealed by simple ordinances.

2) Under Henry III., but more definitely under his son, a royal council as a permanent governing body was formed for the ordinary business of the state and to assist and advise the king. Connected with the royal council were certain periodical meetings of notable prelates and barons. The meetings were at first convoked four times a year, and later annually. The lords were summoned by royal writ, but a selection was exercised by the king, and in the fourteenth century the summons carried no hereditary right to a seat. (*Peers' Rept.* 325, 326; III. 117, 265). The Assembly (Parliament) thus consisted of spiritual and temporal lords and members of the royal council. „The peculiar line of Edward's reforms, the ever perceptible intention of placing each member of the body politic in direct and immediate relation with the royal power, in justice, in war, and in taxation, seems to reach its fulfilment in the creation of the Parliament of 1295" (Stubbs, *Const.* II. 292). The general right of the estates to consent to all grants of taxes, *auxilia, scutagia* and *tallagia*, was established by Edward, 5th November 1297 (25 Edward I. c. 5. 6). This *Confirmatio Chartarum* is in a French text (*Statutes of the Realm*, I. 124, 125), and in a less perfect Latin text, as *statutum de tallagio non concedendo* (Stubbs, *Charters*, 487, 498).

3) The establishment of courts of law under Henry III. and Edward I. was a security against arbitrary judgments under the personal government, though the judges were appointed by the king, and invested with his personal judicial authority. He could both remove them and punish them. This occurred repeatedly in the reigns from Edward I. to Richard II. (Edward III. 1340, Foss, III. 262; 1345, *Ibid.* 365). The separation of the administration of justice from the question of evidence, and the concentration of the former in the persons of learned judges took place in this reign, as did also the constitution of juries of the hundreds and counties to determine the question of fact (*Stat. West.* 1285, Edward I. c. 3).

from whom subsequently grew the justices of the peace. The power of entail was established; and, lastly, a measure of self-government was extended to the counties and municipalities. The parliament in Edward's reign was pre-eminently a judicial assembly. The commoners, however, did not share with the spiritual and temporal lords the royal judicial power; they only participated in the granting of taxes;[1]) but a sign of their growing importance is seen in their virtual assent in the sanction of certain statutes, and in the last year of the reign they were mentioned in the preamble to a statute. Thus under Edward the monarchy became distinctly more constitutional and less mediaeval and personal than in any preceding reign.[2])

In the fifteenth year of the reign of Edward II. appears perhaps the first express recognition of parliament as a legislative assembly; and emphasis was now laid upon the fact that where a consent to royal ordinances was to be given, the assent of the commons must be as essential as the assent of the lords.[3]) It is also significant that the commons now begin to attach conditions to their grants.[4]) Early in the reign, as an outcome of the monarch's incapacity for government, an executive council, under the name of ordainers, was forced upon the king. With

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1) Under Edward I. only a deliberative voice of the commoners was intended, and then for the most part touching only the taxation of the counties and towns. In 11 Edward I. (30th September 1283), knights and burgesses were summoned „to hear and to do such things as should be laid before them on the part of the King" (*Peers' Rept.* I. 187, 188). This participation developed itself in the form of petitions, common grievances, and motions.

2) „Thus we may say that in the time of Edward I. the English Constitution definitely put on the same essential form which it has kept ever since." (Freeman, *Const.* 123). „The Parliaments which Edward gathered at the close of his reign are absolutely identical with those which still sit at St. Stephen's. At the close of his reign the long struggle of the constitution for actual existence had come to an end" (Green, I. 320).

3) *Peers' Rept.* I. 282, 283.

4) In 2 Edward II. a twenty-fifth was granted on the condition that the king should redress eight grievances which were laid before him, which he promised to do. The dismissal and exile of Piers Gaveston was made one of the conditions annexed to the first grant of a subsidy to Edward II. (*Parl. Hist.* I. 56—60).

the support of the commons, however, the king again succeeded in shaking off the obnoxious guardianship of the party of nobles. All the decrees of the ordainers, so far as they violated the prerogative of the crown, were repealed, and it was acknowledged that upon questions touching affairs of the crown and state, resolutions could only emanate from the king himself, with the assent of the spiritual and temporal lords or estates.

The long reign of Edward III., with its constant demands for subsidies, and its frequent parliaments,[1]) gave the commons a sure feeling of their independence.[2]) They advanced in this half-century about as much as the prelates and barons in the half century under Henry III.[3]) The initiative in legislation was now gradually shared between them and the king, and taxation by parliament received further confirmations.[4]) The king, it is true, arbitrarily imposed taxes; but on the other hand he was met by attempts at encroachment, by the estates, on the royal right of appointment.[5]) In the first year of the reign police magistrates or justices of the peace were appointed by royal ordinance in all the counties,[6]) and in 1360 became a permanent institution.[7]) The right of impeachment by the commons likewise began in this reign,[8]) and lastly it was in this reign that par-

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1) Edward III. convened parliament no less than seventy times in thirty-seven of the fifty years of his reign (Gneist, *op. cit.* 408).

2) *Peers' Rept.* I. 335, 336.

3) Gneist, *op. cit.* 380; *Rot. Parl.* IV. 98, 135, 211, 242, 277, 371.

4) By Statute 14 Edward III. (1340) it was enacted that no charge or aid should henceforth be made but by the common consent of the prelates, earls, barons, and commons of the realm of England in parliament assembled. By this statute the king lost the power of imposing a tallage upon the inhabitants of his royal demesne, a power which had not been expressly taken away by the *Confirmatio Chartarum.*

5) Attempts at encroachment by the estates were made in 15 and 30 Edward III., but the demands that were then granted were in both cases shortly repealed.

6) 1 Edward III.

7) 34 Edward III. c. 1.

8) 51 Edward III.

liament was definitely divided into two houses.[1]) During the minority of the incapable and indolent Richard II. the government was in the hands of the council, which discharged the functions of a council of regency. In the second year of this reign, a parliament of the prelates and barons declared itself incompetent to grant taxes without the commons. The nobles, knights and towns were thus merged in their tax-granting capacity and liability. The commoners increased their control over the disbursements of the state. In 2 Richard II. they grant supplies under the condition „that the King be pleased to declare in what way the great sums which had been granted for the war had been expended," and this condition was acceded to.[2]) In the next year they granted a subsidy with the request to the king „that he may be pleased not to convene another Parliament to tax his poor Commons until one year after date."[3]) Impeachments in both houses of the great officers, and their deposition by the king, are frequent in this reign.[4]) By a re-action and the support of the commons the king freed himself from the control

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1) 25 Edward III. The parliament of 1341 (15 Edward III.), which by some is regarded as that at which the final division of the parliament into two houses took place, „enacted that at each Parliament the ministers should hold themselves accountable for all grievances, that on any vacancy the King should take counsel with his lords as to the choice of the new minister, and that when chosen each minister should be sworn in Parliament. Its form was now settled. The third estate had gained a fuller Parliamentary power. The principle of ministerial responsibility to the Houses had been established by formal statute. But the jealousy of Edward was aroused, and he looked on the new power as a rival to his own. The Parliament of 1341 had no sooner broken up than he revoked by Letters Patent the statutes it had passed, as done in prejudice of his prerogative" (Green, I. 414, 415). Two years later the parliament also declared the statutes repealed.

2) Parry, *op. cit.* 140.

3) *Parl. Hist.* I. 357.

4) In 7 Richard II. the commons petition against the bishop of Norwich. In 10 Richard II. they determine on the impeachment of Lord Chancellor Suffolk, who was deposed and fined (*Parl. Hist.* I. 184—190). In 11 Richard II. the royal chamberlain was arraigned and even the royal judges were condemned to death. In 21 Richard II. the archbishop of Canterbury was condemned to banishment for high treason (*vide Parl. Rolls*, 18—28).

of the great nobles and regained his power, but only to abuse it. Parliament was coerced into repealing all decrees of former years which were aimed at restricting the royal prerogative. Finally the incompetent, arbitrary monarch was formally deposed by a resolution of both houses of parliament, a precedent being thereby established.[1])

After the usurpation of the house of Lancaster the throne was no longer founded upon the right of birth alone, but upon the recognition of parliament as well. Thus, under Henry IV. a favourable opportunity was offered for the extension of parliamentary powers. The peerage was now consolidated, and the inheritable right of those summoned by custom to a summons to parliament was acknowledged. The constitutional position of the commons improved during the earlier years of this reign. They requested and received a presentation of accounts,[2]) and acquired a precedence in the voting of subsidies.[3]) Their co-operation in making statutes also received further confirmation; but exclusive jurisdiction was still reserved to the upper house. Henry was compelled by the commons to name sixteen counsellors, by whose advice solely he was to be guided, and they were not to be dismissed unless convicted of an offence. No

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1) From the deposition of Richard II. probably dates the idea of regarding the prelates as the first estate of the realm, the temporal lords as the second estate, and the deputies of the counties and towns as the third estate. (*Peers' Rept.* I. 357). Under Richard II. appears shortly the „assent of the prelates, lords and commons". Under Henry V. the „consent" of the commons is met with. In 11 Henry VI. the expression „by the authority of Parliament" first occurs. (Stubbs, *Hist.* III. 465).

2) „Under Henry and his immediate successors the Commons gradually make conditions for the employment of the subsidies, and recommended retrenchment in certain branches of the public expenditure, and make the granting of fresh subsidies conditional upon the redress of national grievances" (Hallam, *Const. Hist.* III. 84; *vide* also *Rot. Parl.* IV. 98, 135, 211, 242, 277, 371; *Parl. Hist.* I. 286).

3) The commons now claimed for themselves the exclusive right of originating money grants, and insisted on the absence of the king while they were discussed. In 5 Henry IV. the commons requested the king to remove four of his ministers together with his confessor, which he did, though protesting he knew of no cause or occasion. (*Rot. Parl.* III. 525).

officer of the household was to hold his place for life or for a fixed term. The council was to determine nothing which the common law was capable of determining. Numerous abuses in the council and in the administration were enumerated and prohibited.[1]) During the short but brilliant reign of Henry V. there occur again acts of arbitrary rule on the part of the king.[2]) But the increased importance of the commons is seen in their being convened to take part in negotiations touching the league with the Emperor Sigismund and the treaty of Troyes, after a great council had declared itself incompetent to deal with these subjects.[3])

The reign of the incapable and insane Henry VI. was at first favourable to the increase of parliamentary functions and privileges. After the death of the Duke of Bedford in 1434, however, the situation of the realm became more and more critical, till in 1455 the storm broke which involved in the war of annihilation the two great dynastic factions. During this wild aristocratic struggle for the political supremacy, which lasted with intermissions for thirty years, government by constitutional means was frequently suspended. Under Edward IV. personal rule was again restored and, supported by the commons, he declared the rule of the kings of the house of Lancaster to be usurpation, and by „bill of attainder“ one hundred and fifty-one nobles, knights and clerics guilty of high treason. About one-fifth of the land fell by outlawry and confiscation into the hands of the king.

During the early part of the Lancastrian rule, parliament, and especially the house of commons, had continued to increase its power. The constitutional growth of the previous

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1) Petition of thirty-one articles, 8 Henry IV. (*Rot Parl.* III. 585).

2) Nicolas, *Privy Council*, II. 29, 30.

3) Henry agreed that no statute should have any force or effect without the express assent of the commons (Brougham, *Works*, XI.). He however refused to concede the privilege of freedom from arrest, though the commons from the first had claimed freedom of speech in parliament. The privilege had seldom been infringed, and in the next reign received recognition.

century had been continued. The commons had secured the right of originating money bills, not to be altered by the house of lords, nor discussed in the presence of the king. They had secured the right of joining as an equal estate of the realm in the passing of laws. They had succeeded during the reign of Henry VI. in preventing any changes in the form of their petitions, by bringing in complete bills, to be rejected or accepted as a whole. And they had in more than one instance exercised the right of impeachment. But before the close of the wars of the Roses the constitutional growth of the country had been decidedly checked, and the commons had lost ground, and also in a great measure, their independence. A statute in the eighth year of Henry VI. limited the franchise touching knights of the shire to freeholders of lands and tenements of the value of forty shillings. Thus an aristocratic tone was given to the house. In addition to this the nobility and the crown had begun to tamper with, and exert an influence upon, the elections in the counties. The sheriffs, who exercised the power of summoning the deputies from the towns, were likewise brought under the influence of the ruling party.[1]) This decrease in the power and efficiency of the lower house, together with the destruction of the old upper house, had tended greatly to increase the importance of the royal council, which now practically usurped the legislative power of both houses. At the close of the reign of Richard III., owing to the nearly complete annihilation of the old nobility, and the dependence of the new nobility on the crown, the power of the two houses of parliament was about equal.

The Tudor Absolutism.

During the last half century of the Middle Ages the foundation of the still unfinished, but firmly rooted constitution had

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1) Attempts by the sheriffs at influencing elections and falsifying the returns of individual members, especially of knights of the shire, had already been resorted to under Richard II.

been rudely shaken. This institution had been the growth of centuries. Its foundations had been wrung from an unwilling tyrant. In defence of its principles, two kings had been deposed; and two had been defeated in open battle, the one being taken captive, the other slain. With the accession of Henry Tudor, upon whom the remnants of the two factions had settled the crown,[1]) that change in the character of the monarchy is completed which was begun by Edward IV. The constitutional growth of the nation, which had been steadily advancing since the time of Edward I., was now checked. A personal and virtually absolute monarchy had displaced one national and feudal in character. The ancient nobility having been almost exterminated in the war of mutual destruction, the council and chief officers of state again, as in the fourteenth century, transacted the important business of the realm. The councillors were appointed by the king, and were independent of parliament.[2])

The intermediate classes having thus disappeared, the monarch found himself face to face with the commonalty; but he had little to fear. The commonalty was yet far too weak to act as a check upon its rival, if at this period it could be called such. The Church needed the support of the crown. All its influence was therefore withdrawn from the people, and thrown on the side of the king; and from now until the time of Cromwell the ablest ministers were supplied from its ranks.[3]) The restricting of the franchise under Henry VI. to freeholders of forty shillings, had brought the representation under the influence of the crown and the county magnates. The commoners were thus prevented from acting with their former independence;

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1) Henry adhered to the form of having himself declared king by the parliament.

2) „The King's will is the sole constituent of a privy councillor." — Coke.

3) Under Henry VII. the king's nominees to episcopal sees were without exception appointed. But the question lay in the background „whether the King and nation should accept, at the Pope's dictation, the nomination of so large a portion of the House of Lords as the bishops really formed", which „would have placed the decision of national policy in foreign hands" (Stubbs, III. 318).

and from this time begins that slavish, servile, subservient demeanour which, with intermissions, lasted into the present century.

The opportunity was now offered for establishing and consolidating a strong monarchy, and Henry, determined and avaricious, and bent on firmly securing his dynasty, was not slow to grasp the situation and to make good use of it for furthering his ends. The first scheme of his policy was to keep the great barons in subjection; and this he accomplished by abolishing the military liveries, by numerous forfeitures, and by other stringent measures. At the beginning of the reign it was found necessary, in order to cope successfully with the partiality and venality of the sheriffs and the juries, the insolence of the nobles and their armed retainers, to have a strong and energetic police system; and, in addition to this there developed in the council at this time a peculiar new creation. This was the privy council as Star Chamber.[1]) Henry, by illegal methods,[2]) by the revival of obsolete penal statutes, by an unjust employment of the royal right of escheat and, lastly, by his economy, kept the coffers of the royal treasury well filled. By such means he freed himself from the necessity of calling frequent parliaments, and in the last seven years of his reign he summoned but one.[3])

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1) „In consideration of existing great tumults and illegal assemblies, corruption and partiality“ the statute 3 Henry VII. (c. 1) empowered the Chancellor, Treasurer, and Keeper of the Privy Seal, together with a bishop, a temporal lord of the council, and two justices of the realm, to examine persons upon royal order, and to punish them for seven offences especially enumerated, among which were sedition, illegal assemblies, factious unions with distinctive liveries and badges. This is the extraordinary criminal power of the king in council which had never ceased, and which was here acknowledged afresh and embodied in a commission (Gneist *op. cit.* 504, 505).

2) The practise of levying „Benevolences“ or forced loans (without any definite prospect of repayment) was first introduced by Edward IV., but was declared illegal by a statute of Richard III. The abuse was revived in 7 Henry VII., and recurred repeatedly, especially in the years 1495, 1505, 1525, and 1545. „Morton's Fork“ was another clever principle of extortion.

3) During the reign altogether seven parliaments were summoned; a number quite sufficient doubtless for the monarch's purposes, as he had no pecuniary

Under Henry VIII. the personal rule attained its full development. In the king were centred all the forces of the government. The parliament was merely an unresisting instrument for gratifying the arbitrary caprice of the monarch. The sovereign power was further augmented by the assumption of the ecclesiastical supremacy, and the transfer to the crown of the immense power which the church had hitherto wielded. The dissolution and secularization of the monasteries not only supplied him with great wealth, with which to bribe the temporal lords, but deprived the spiritual peerage of twenty-eight seats, thus reducing it to a minority in the house.[1])

How completely the parliaments were in the grasp of the king a glance at some of the more important statutes and resolutions enacted in this reign will show.[2]) In 1529 the king was released by act of parliament of all the debts he had contracted six years previously; and in 1541 this act was followed by a resolve, that if anyone had been repaid his debt the money was to be refunded by him.[3]) He was further

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needs, and the seat of actual government lay in the privy council. According to Brougham, Henry VII. was the first king since Henry III. who ever lived within his income (*Const.* XI. 199).

1) The crown acquired by this means £ 500,000 personal property, and at least £ 131,000 annual rents from real estate; according to some estimates the amount was far greater. The clergy now lost the character of a separate estate of the realm. The abbots sat for the last time in the upper house, 28 June 1539 (31 Henry VIII.).

2) Bills initiated by the crown were almost invariably accepted. In 1525 the king was resisted (though without success) when he levied a tax and afterwards a „benevolence". In 1532 the commons rejected a bill, and Henry, though with a bad grace, submitted. The exercise of parliamentary privileges shows in this period many vicissitudes; but, as a rule, the Tudors respected the personal rights of members. In 35 Henry VIII., the sheriffs of London were committed to prison by the house for arresting a member. In the same year, the privilege of the house was acknowledged as against an order of arrest issued by the council (Nicolas, *Proc.* VII. 306). *Vide* also case of Strode, a member of the lower house. 4 Henry VII. (*Stat. of the realm*, III. 53).

3) The parliaments of Henry VIII. showed themselves so compliant, that he is said to have raised more subsidies than all his predecessors together.

empowered, as a general law, on attaining the age of twenty-four, to repeal all acts of parliament made while he was under that age, and even after the regency had ceased he was suffered to rescind whatever had been enacted for six years.[1]) The act of succession, which annulled the marriage with Catherine of Aragon, was followed by the act of supremacy, which made it high treason to deny to the king the title of supreme head of the Church. Under this act Fisher and More both suffered death.[2]) With the reformation parliament there was a disposition on the part of both houses to delegate to the king extraordinary powers and even legislation itself. It declared: „Your high Court of Parliament has full power and authority, not merely to dispense, but also to authorize a certain person or persons to dispense from these and all other human laws of this your Kingdom.“[3]) The parliament of 1539 passed the extraordinarily severe measure known as the „Bill of the Six Articles“, in which were embodied the chief points of the Catholic religion.[4]) By the same parliament the ordinances of the king in council, if stated to be made under pain of fine and imprisonment, were declared to have the force of statutes, provided „that no one be injured in real estate, in liberty, or in person, nor the laws

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1) Stat. 28 Henry VIII. c. 17.

2) „The servile Parliament married and unmarried the King; legitimized and bastardized his issue, at his nod. In settling the order of succession, they allowed him to alter that order, and to entail the crown at his pleasure (Stat. 35 Henry VIII. c. 1). Finally, whatever victims he chose to destroy, the Parliament attainted.“

„Instead of guarding the constitution as a whole from violation, and preventing abuses of the executive power against individuals by its penal powers, the Parliaments had become so subservient in their penal functions that under Henry VIII. a dictatorially selfish wilfulness, under Edward VI. party-passions, and under Mary religious fanaticism had no surer mode of striking their opponents than by the resolutions of Parliament“ (Gneist, *op. cit.* 480).

3) Amos, *Reform. Parl.* 65; cf. 25 Henry VIII. c. 237.

4) Gardiner's Six Articles, or „The Bloody Act.“

and customs of the realm subverted thereby.“ [1]) Thus the king by proclamation might make any opinion heretical, and might denounce death as the penalty of holding it.

The first parliament of Edward VI. abrogated not only all the new treasons of the last reign, but all those created since 25 Edward III.,[2]) thus completely reversing Henry's home policy. To the treasons of the statute of Edward two were added, viz., a proved public attack in words three times repeated against the king's supremacy, and a similar attack in writing, printing or by overt act. Moreover it was enacted by the house of commons that no person should be convicted of treason except by the testimony of two witnesses who were to be produced at the trial.[3]) The high idea of the sovereign power suffered but little during Edward's minority. The young king's views of royalty were identical with those of his energetic father. Somerset regarded himself as the representative of the crown, and one chief cause of his fall was the absorption of all power into his own hands, and his disregard of the rights of the council.

In the reign of Mary the tendency of parliament to obey the royal dictates appears as strong as ever. The restoration of the Catholic religion and the Romish supremacy was shortly accomplished, and the acts of parliament against the pope were repealed. In her first parliament the commons petitioned the

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1) *Statute of Prerogative*, 31 Henry VIII. c. 8; repealed on accession of Edward VI.

2) 1 Edward VI. c. 12. This Bill repealed the acts of Richard II., Henry V., and Henry VIII., against the Lollards; the act of the Six Articles, and those depending on it; the act of the thirty-fifth year of Henry's reign, prohibiting the reading of the English Scriptures in churches and to the poor, and all other acts or sentences regarding doctrine or religion. It repealed also statutes passed in Henry's reign making new felonies, and those giving the authority of law to the king's proclamation (31 Henry VIII. c. 8; 35 Henry VIII. c. 23).

3) 5 and 6 Edward VI. c. 11, § 12. The house thus showed its disapprobation of the manner in which the trial of Protector Somerset had been conducted. But for this act of independence parliament was dissolved, and a new and carefully chosen one substituted.

queen strongly against the Spanish marriage; but in the next parliament the bill necessary for its consummation was passed. Shortly afterwards three bills, introduced by Gardiner, for the persecution of heretics were only defeated with great difficulty in the upper house. After a new parliament, elected expressly for the purpose,[1]) had abrogated the attainder against Reginald Pole, the legate hastened to England, and a reconciliation between the house and himself shortly took place. On St. Andrew's day both houses assembled at Whitehall, and received upon their knees absolution from the papal legate. The persecuting statutes of Henry IV. and Henry V., which had been previously annulled, were now re-enacted and put in force.

The reformation of Henry VIII., thorough and sweeping though it had been in many directions, had scarcely touched the question of dogma. The dogmatic reformation was fully carried out by the regency of Edward VI., but was quickly suppressed under Mary. Finally, Protestantism in England was re-established and brought to completion under Elizabeth, though not precisely in the manner intended either by her father or by the theologians of Edward. By the new act of supremacy, the sovereign was once more declared the supreme head of the national church, and all the jurisdiction of the papal see was done away with forever. The statute also repealed the acts of the last reign which had revived the statutes against heresies,[2]) and gave the queen power to appoint commissioners to exercise

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1) The sheriffs were expressly instructed to send men, „such as were of the wise, grave and catholic sort, such as indeed meant the true honour of God."

Mary's third parliament rejected a few of her favourite bills. In 2 Mary an indictment was attempted in the king's bench of those members who had, in consequence of the proceedings touching the question of religion, quitted the house without permission; but this case never came to an issue (*Parl. Hist.* III. 312—335). The parliament which met in Oct. 1555, would only grant a subsidy under the pledge that none of it should go to Philip. It also refused to suffer the firstfruits to be paid to the pope. A parliament so little obsequious to the crown was speedily dissolved.

2) 1 and 2 Philip and Mary, c. 6.

ecclesiastical jurisdiction.[1]) By the act of uniformity (passed in spite of the opposition of all the bishops) all ritual and Church discipline was made subordinate to the regal power.[2])

In her government of the Church Elizabeth was very arbitrary and imperious. From the first she had been jealous and tenacious of her supremacy in matters ecclesiastical, and claimed the exclusive initiative in all legislation touching affairs of the Church.[3]) She likewise asserted a personal right to appoint, suspend, and dismiss the bishops. In the parliament of 1571 the house of commons directed its attention almost wholly to ecclesiastical reforms, and it was in vain Elizabeth attempted to check this interference with what she considered her own prerogative. Many bills of a puritan tendency were introduced, some of which became law, whilst others were allowed to drop either in the upper house or for want of the queen's assent.[4])

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1) 1 Elizabeth, c. 1. The Act of Supremacy declares all ecclesiastical legislation and jurisdiction to be an emanation from the crown, and all officers and servants of the crown are by it compelled to take the ecclesiastical oath of allegiance. Furthermore, by this act the queen was empowered to form „a Court of High Commission", which was invested with almost unlimited authority in the questions of Church government and discipline. This court in 1583 attained its full powers.

2) 1 Elizabeth, c. 2. Other statutes supplementary were enacted against bulls from Rome, mass, jesuits and priests, sectaries, popish recusants, etc. The Act of *Praemunire* was extended under Elizabeth so as to subject all the papists of the country to capital punishment for refusing a second time to abjure their religion — a law so harsh that the queen never ventured to execute it generally.

3) Thus in 1593, when one Mr. Maurice brought in a motion for restricting the encroachments of ecclesiastical courts, the speaker refused to put the question till he had communicated with the queen. Maurice was taken into custody, and forbidden again to take his seat in parliament. Her view of the position of the commons is shown by her answer to the speaker of the same parliament, demanding as usual liberty of speech. She replied „that liberty they should have, but that the liberty consisted in the privilege of saying Yes and No."

4) Strickland, the most prominent member of the puritan party, was reprimanded by the queen, and by royal order excluded from the house. But the commoners asserted their privilege of free speech, and he was re-instated

The prerogative was stretched by Elizabeth in the matter of the monopolies. This vexed question had been broached by the commons as early as 1566, and again quite openly by them in 1572. In 1576, Wentworth, one of the puritan leaders, had, by his complaints against the monopolies she had granted, excited the queen's anger. Finally, in the last parliament of Elizabeth, which assembled in October 1601, on account of the complaints of this exercise of the royal prerogative, a bill was introduced against them, but while the bill was pending, the queen herself abolished the abuse.[1])

Elizabeth only once, it would appear, interfered to levy money without parliamentary sanction, when she imposed a duty on sweet wine. She also in 1586 made the clergy pay an assessment, not voted by convocation; but in principle the right of taxation by parliament remained during the whole of this period fully recognized.[2])

In France, in Spain, and elsewhere in Europe, the idea of the regal power had gradually undergone a change. The feudal notion of the king as a suzerain among peers had given place to a conception of royalty which regarded him as the arbitrary master and ruler of the people and sole proprietor of the land. In England this idea had already found its complete expression under the Norman and early Plantagenet kings.[3]) But

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(D'Ewes, *Journal,* 156, 175, 176). In the parliament of 1597, Elizabeth assented to 43 bills, public and private, and rejected 48 that had passed both houses (*Parl. Hist.* I. 905).

1) *Parl. Hist.* I. 923—943. „I appeal to the judgment of God, that never thought was cherished in my heart, that tended not to my people's good" (*Parl. Hist.* IV. 480). She closed her address, the last she ever uttered to the commons, with these words: — „Though you have had, and may have, many Princes more mighty and wise sitting in this seat, yet you never had, or shall have, any that will be more careful and loving."

2) She once refused a forced loan, on its being offered her by parliament; and where she herself impressed them, she was conscientious in regard to repayment.

3) Much earlier therefore than in France. The oath to Philip Augustus contained a promise of fealty, „so long as the King shall do justice in his court." Louis IX. declared rebellion justified against the king who denies justice to his subject, pronouncing the fief of the vassal forfeited who refused to serve his

with the birth of Magna Charta absolutism had gradually given place to a limited monarchy. The causes which enabled the Tudors to reign so absolutely in a limited monarchy are not far to seek. The Thirty Years' war of the Roses had destroyed the greater part of the ancient nobility, and in its place a new aristocracy had arisen, dependent on wealth and court favour which became pliant tools in the hand of the king, to whom they owed their elevation. The commons, on the other hand, deprived of their natural leaders, had not as yet found sufficient strength among themselves to offer serious resistance to the power of the crown.[1]) Personal government thus became hereditary in the Tudor sovereigns. Its establishment, however, completed the destruction of feudalism in England, and the power and prestige of the old feudal nobility.

Under Henry VII. and Henry VIII. the parliament was almost invariably submissive to the sovereign will, and decreed whatever the caprice of the monarch might fancy. Of this we find few if any signs in the parliaments of the fourteenth, early part of the fifteenth, and seventeenth centuries, — very different indeed were the Tudor parliaments from those which overthrew Richard the Second and Charles the First. Under Henry VII. and his immediate successors the crown did not hesitate to tamper with the elections, and those members who owed their seats directly or indirectly to its influence could naturally be depended upon to serve its ends. Moreover, the commons were restrained, overawed, and rendered submissive to the royal wishes through fear of being attainted by the privy council as Star Chamber. Thus was engendered a mutual distrust among

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mesne lord in the prosecution of the resistance (Montl. *Monarch. Franc.* I. 434; *Etabl. de S. Louis*, c. 49). In a diet held at Roncaglia by the Kaiser Friedrich I., seventy years after the Norman Conquest of England, it was enacted that in every oath of fealty from a vassal to his lord, the Emperor should be excepted by name (Muratori, *Script. Ital.* VI. 789).

1) „The Commons had not yet gained strength enough to act without the Lords, and the Lords had ceased to be an independent body" (Freeman, *Const.* 140).

the members themselves, which prevented their offering any serious resistance to the encroachments of the crown.

Under Elizabeth, parliament was often treated with but little respect, and sometimes even with contempt. But on the whole there can be no doubt that it had become more independent and the crown more under restraint in her reign than under that of her father, high as were her notions of prerogative, and submissively as her reproofs were generally received. And the speaker, Onslow, was justified when he said, in an address to Elizabeth, „By our common law, though there be for the Prince provided many princely prerogatives and royalties, yet it is not such as the Prince can take money or other things, or do as he will at his own pleasure without order, but quietly to suffer his subjects to enjoy their own without wrongful oppression; wherein other princes by their liberty do take as pleaseth them.“ [1])

The Jure Divino Monarchy.

With the accession of James I. began the contest between the crown and the parliament which ended before the close of the century in the final ruin of the Catholic Stuarts and the establishment of the constitution. James Stuart attempted to inculcate his one great principle — the doctrine of absolute supreme sovereignty based upon the idea of the Divine right of kings; but this he did, not in the

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1) *Parl. Hist.* I.; Brougham, *Const.* XI. 214, 215.

From John Lackland to Henry Tudor, the constitution had grown, little by little, piece by piece, from concessions which, from time to time, had been obtained from the monarch, in return for pecuniary aid. The Plantagenets held parliaments in 130 of their 213 years (Edward I. — Richard III.), altogether 193 parliaments. The first three Edwards reigned 105 years and summoned 119 parliaments: Edward I. (1272—1307), 49; Edward II. (1307—1327), 17; Edward III. (1327—1377), 53. The five Tudors reigned 118 years, and summoned only 58 parliaments: Henry VII. (1485—1509), 7; Henry VIII. (1509—1547), 21; Edward VI. and Catholic Mary (1547—1558), 17; Elizabeth (1558—1603), 13.

Tudor spirit, not with a consciousness of his royal duties and obligations, but merely for the sake of enforcing his personal will. For this perilous experiment his son and grandson paid the penalty. One of the first arbitrary acts of this reign was the unlawful imprisonment by order of the king of ten of the Millenary Petitioners, the Star Chamber having declared that the Millenary Petition tended to sedition and rebellion. The king's misappreciation of his own powers and prerogative, and his utter miscomprehension of the rights and privileges of the commons, showed itself from the very first.[1]) In the proclamation summoning his first parliament he presumed to dictate to the electors whom they should elect, and to decide upon the validity of elections.[2]) This royal meddling gave rise to the quarrel over the member Goodwin which finally terminated in a compromise between the king and the commons.[3]) The king however

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1) James I. more than once laid it down in his speeches that, „as it is atheism and blasphemy in a creature to dispute what the Deity may do, so it is presumption and sedition in a subject to dispute what a king may do in the height of his power"; „good Christians", he adds, „will be content with God's will, revealed in His Word; and good subjects will rest in the king's will, revealed in his law" (*King James's Works,* 531).

2) Under the Tudors the number of members of the lower house was increased by 132, so that 467 members were summoned at the accession of James I. Under James the number of peers was doubled. The higher dignities conferred on peers and the new creations were under James I., 98; under Charles I., 130; under Charles II., 137; and under James II., 11; altogether 376 under the Stuarts, against 146 during the period of the Tudors. James I. created 62 new peers; Charles I., 59; Charles II., 64; James II., 8; altogether 193, against which were to be set off 99 extinct peerages (May, *Const. Hist.* c. 5; Gneist, *op. cit.* 592).

3) One Goodwin had been elected for Buckinghamshire; some years previously he had been outlawed; the proclamation had forbidden the election of outlawed men; the king therefore declared the election void, and secured the return of Sir John Fortescue, a member of the council. The commons insisted upon their right of inquiring into the election of their own members. A compromise was finally agreed upon, both elections were declared void, and a new writ issued (*Parl. Hist.* I. 998—1017). From this time onwards their privilege to decide upon elections has never been questioned. James on assenting to all the bills of his second parliament (1606), explained that he did so „as a special token of grace or favour, being a matter unusual to pass all Acts without any exception."

confessed that the house of commons was a court of record, and from henceforth was established the privilege of the house to decide upon disputed elections touching its own members. The commons asserted that their privileges were not of grace, as the king conceived, but of right, and that the high court of parliament was the supreme court of the land.

The third parliament of this reign met in 1609, and with it began the battle which was to end only with the Revolution. The government had been extravagant and needed money; but before asking the commons for it, the treasurer, Cecil, had first had recourse to various illegal means of obtaining it. He collected loans under privy seals and increased the customs.[1]) But the amounts thus raised proved insufficient and Cecil, in demanding a supply, invited the commons to state their grievances. They took him at his word, and not only directed their attention to the illegal taxation but attacked the whole structure of absolute monarchy. Parliament complained of the new impositions, of monopolies, of extraordinary legal authority of the court of High Commission, and of the court of Wales, and lastly they complained of the free use of royal ordinances and decrees, which were held as binding as statutes. The anxiety of the commoners was not without reason. The *jure divino* idea of the kingly office was in places fast becoming rooted. Not only did this show itself in the language of the Church and in the bearing of her obsequious officials, but it was likewise shared by the civil lawyers and the lawyers of the equity courts, who wished to put the king into the same position as the emperor had occupied in the Roman theory of law.

In the next parliament[2]) (1614) an attempt was made by the king to control legislation by the indirect influence of members (undertakers), a scheme that only succeeded in arousing

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1) He imposed a duty on currants and levied customs at the outports, ports other than those of London and the Cinque Ports. These impositions provoked an appeal to the courts of law, which, however, resulted in a judgment favourable to the king.

2) „The Addled Parliament."

the anger of the commons, who at once proceeded to discuss their old grievances. James, provoked at his failure, hastily dissolved the parliament, nor did he summon another for seven years. During the ministry of Cecil encroachments on the right of self-taxation had been frequent enough; now other illegal means of raising money were resorted to.[1]) Free gifts were demanded from the nobility, benevolences were collected,[2]) money was raised by writs under the privy seal, patents and monopolies were multiplied, and finally judicial appointments,[3]) and peerages below the grade of marquess were publicly sold.[4]) The king opened the parliament of 1621 with an attempt at an apology for his conduct to the last parliament; but the commoners were not to be turned aside from their chief object. Under the direction of Sir Edward Coke they proceeded to impeach the chief monopolists,[5]) and denied the power of the crown to grant monopolies. Next they impeached no less a person than the Lord Chancellor, Francis Bacon, who was accused of taking bribes and found guilty.[6])

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1) The cautionary towns which the Dutch had lodged in the hands of the English as security for the money Elizabeth had advanced, were resold at about a third of their value.

2) James took a benevolence in 1614, and a second one in 1620.

3) The king to fill his coffers, had put vacant places up for sale, and these included judicial appointments, as those of the Attorney-General and the sergeants, for which sums of £ 10,000, £ 4000, and the like were paid (Foss, VI. 3).

4) James invented the order of Baronet, and sold the title for £ 1000. Some two hundred were created; but not much more than half were at first so disposed of. Under the Stuarts the dignity was granted successively to nine hundred persons. The dignities of baron, viscount, and earl were sold for £ 10,000, £ 15,000, and £ 20,000 respectively (Franklyn, *Annals,* 33).

5) The house first proceeded to draw up a petition against any relaxation of the penal laws touching the Roman Catholics. The right of impeachment which had fallen into disuse, was now revived. The chief monopolists Sir Giles Mompesson and Sir Francis Mitchell were impeached, not only because monopolies were in themselves odious, but because they denied the power of the crown to grant them. Barnet, a judge of the prerogative court, was impeached for corruption, the bishop of Llandaff for bribery, and the treasurer, Middlesex, for bribery and official corruption.

6) No less than twenty-two instances were proved against him.

Having disposed of home questions, the house was proceeding to discuss foreign affairs, when the king adjourned it, on the ground that the commons were trenching on the royal prerogative. During the recess he issued a proclamation forbidding all men to speak of affairs of state. On the re-assembling of parliament in January 1622, a long and angry dispute ensued which ended in a vigorous protest in which the commons declared that their privileges were not the gift of the crown but the natural birthright of English subjects, and that all matters of public interest and affecting the welfare of the realm were within their province.[1])

The parliament of James I. declared its absolute independence and supremacy. It asserted its exclusive right of taxation, suppressed monopolies, and reformed abuses in the courts of law. It re-established the right of impeachment, and impeached and drove from office the highest ministers of the crown. It enforced the right of the lower house to decide upon elections touching its own members. It dealt with questions of religious and foreign policy, and finally it asserted its privilege of freely discussing all matters connected with the welfare of the state.

Charles the First had less ability but more courage than his father. He was besides obstinate and unteachable, and, like all his family, deceitful. During his reign he summoned but five parliaments. The first parliament, which assembled on 18th June 1625, was unwilling to grant money to prosecute the Spanish war but was quite ready to discuss the affairs of the

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1) This protest so incensed the king that he tore it from the record with his own hand, and at once dissolved the parliament. The most prominent of the opposition, the Lords Oxford and Southampton, with the commoners Philip, Pym, Coke and Mallory, were imprisoned. Coke had already been dismissed from his office in 1616 at the instance of Lord Bacon, because he had asserted the authority of his own court against the court of Chancery, and the ecclesiastical courts. This was the first time a Lord Chief Justice had been dismissed from political motives. James declared to his judges „that he would himself decide legal questions, as he had been told that law depended upon reason, and he was as well furnished with reason as his judges".

Church. In less than two months the parliament was dissolved. The next parliament assembled 6th February 1626, and at once proceeded to appoint three committees, one for religion, one for grievances, and one for evils. Apart, however, from the punishment of Montague, the committees accomplished but little. Sir John Elliot induced the house of commons to impeach Buckingham for the miscarriage of the war with Spain and for general mismanagement. It was only by dissolving the parliament that Charles was able to save his favourite.[1])

Charles was now so foolish as to begin a war with France, and having no money from parliament with which to carry it on he sought to raise it by forced loans and other unlawful expedients. Noblemen and gentlemen [2]) who refused to lend were imprisoned by order of the privy council, and those of humbler station were impressed to serve as soldiers. Want of money compelled Charles to summon a third parliament in 1628. This parliament drew up the Petition of Right, which declared forced loans, arbitrary arrests, billeting of soldiers upon private houses, and procedure by martial law, unlawful.[3]) This petition the king was constrained by both houses to acknowledge. This was the first great concession obtained from the crown for two hundred years, and the most important since the confirmation of the charters by Edward I. in 1297. At the reassembling of parliament in 1629, the commons renewed the discussion touching tonnage and poundage, and also prepared to attack the bishops. The

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1) „Remember", said Charles I. to Lord Keeper Coventry, „that Parliaments are altogether in my power for their calling, sitting, and dissolution; and, therefore, as I find the fruits of them to be good or evil, they are to continue or not to be."

2) Five of the gentlemen imprisoned sued for their writ of *habeas corpus*, but without success. This is known as „The Five Knights' Case".

3) The four points of the Petition of Right are: (1) that no freeman shall be compelled to pay any gift, loan, benevolence or tax without the consent of parliament; (2) that no freeman shall be imprisoned or arrested contrary to the law of the land; (3) that soldiers or sailors shall not be quartered upon private houses; (4) that no commission shall be issued in time of peace to try subjects by martial law (Stat. 3 Charles I. c. 1; *Parl. Hist.* II. 431). *Vide* Appendix A.

king thereupon dissolved the parliament and threw the leaders of the opposition into prison.[1])

Charles was now resolved to govern without a parliament, and for eleven years, 1629—1640, the personal will of the king supplanted the law of the land. With the aid of the ecclesiastical government, the privy council,[2]) and a subservient judiciary, he set out to undermine the foundations of the constitution. The grievances of this reign may be ranged under taxation, the administration of justice, and religion. First the financial rights of parliament were to be abolished. The whole of the customs, tonnage, poundage and impositions were now by the sole authority of the king. This was followed by the tax known as ship-money,[3]) by distraint of knighthood, by the sale of monopolies, and by exorbitant fines.

The perversion of the courts of justice began with the accession of the Stuarts, who replaced upright judges by servile and unprincipled men. In 1626, Charles dismissed Lord Chief Justice Crew for refusing to acknowledge the legality of enforced loans; in 1630, Chief Baron Walter was suspended because he disputed the legality of a proceeding against members of parliament on account of acts and speeches in the house.[4]) The

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1) Elliot died in the Tower, and Valentine and Strode remained there until the meeting of the Short Parliament in 1640. (Judgment annulled 15 Car. II.).

2) The Star Chamber was perhaps a necessity of the times under the Tudors; but under the Stuarts it became an instrument of power by which independence and right were stifled. Banishments, house-searchings, seizures, and refusal of the *habeas corpus* had now become the rule. From this centre that method of government was developed, which to use Clarendon's expression „commands by ordinances what was not commanded by law, forbids what was not forbidden by law, and then again punished disobedience to the ordinances by heavy fines and imprisonment" (Gneist, *op. cit.* 549).

3) Writs were issued requiring ship-money in 1634, 1635, 1636 and 1639.

4) In 1634 Sir Robert Heath was suspended for his opposition to ship-money, and his place taken by Sir John Finch, speaker of the house. The corruption of the courts was proved by the judgment rendered in the case of Hampden, who had refused in 1636 to pay ship-money, and by the condemnation of Sir John Elliot, Denzil Holles, and Benjamin Valentine. In the judgment against Hampden, Finch said, „No Act of Parliament can bar the King of

king as head of the Church, zealously asserted his cause against both Catholics and Puritans, and the Church in return was to inculcate in all the duty of absolute submission to the royal will.[1]) The Puritan controversialists were brought before the Star Chamber and cruelly punished, and Puritan ministers were summoned before the court of High Commission and admonished or suspended.

The resources of the crown were now exhausted, and the necessities of war and the Scotch insurrection drove Charles after eleven years once more to summon a parliament. This parliament sat but twenty-two days. It refused to begin with granting supplies, and was consequently dissolved on the 5th May 1640. The Long Parliament met on the 3rd of November following, and shortly set about reforming the abuses of the royal power.[2]) The parliament began with the impeachment of Windebank, who had been secretary of state, and Finch, who had been lord keeper; but these ministers saved themselves by flight. It next impeached Strafford of high treason and condemned him by act of attainder.[3]) In December Laud was impeached, after which the house proceeded to more important matters. It declared that no customs duties could be imposed

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his regality. Acts of Parliament to take away his royal power in defence of his kingdom are void, or Acts to bind the King not to command the subjects, their persons, their property, and I say their money too, for no Acts of Parliament make any difference".

1) After Charles on the 5th May 1640 had dissolved the Short Parliament, the ecclesiastics remained behind to enact the *canones*, which pronounce „every assertion of an independent coactive power besides the royal power to be high treason". The attempt of Charles in 1637 to force the English liturgy upon the people of Scotland drove them into the agreement known as the national covenant, by which they bound themselves to maintain the presbyterian form of religion and the authority of the king (1638).

2) „They must now be of another temper, they must not only sweep the house clean below, they must pull down all the cobwebs which hang round the top and corners. To remove all grievances they must pull up the causes of them by the roots." — Pym.

3) *Parl. Hist.* II. 757.

without the consent of parliament. By another act ship-money was declared illegal; the judgment against Hampden was cancelled, and the judges who had taken part in these proceedings were put on their trial.[1]) An act was passed for the limitation of the royal forests, and one forbidding the distraint of knighthood. The star chamber,[2]) the council of the north, the council of Wales, and the court of high commission,[3]) were abolished, and ecclesiastical courts were deprived of the power to inflict fine, imprisonment, or corporal punishment. The parliament forced the king to accept a bill providing that it should not be dissolved, prorogued, or adjourned without its own consent; and finally it passed the first triennial act.[4])

The Petition of Right and the statutes enacted by the Long Parliament till its first adjournment in August 1641[5]) have the importance of a second Magna Charta. The constitution of England now assumed very nearly its present form. The responsibility of officers of the crown to parliament, the absolute financial control of the house of commons, the supremacy of the common law and of the regular courts of justice, had been asserted beyond the possibility of doubt.

It is unnecessary for the present purpose to follow the constitutional struggle of the next few years. The struggle for power, first between the Long Parliament and the king, and later between the army and the parliament, finally terminated in the complete subversion of the monarchy, and England became a republic.[6]) The puritan military dictatorship of Crom-

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1) *Parl Hist.* II. 700.

2) Statute 16 Charles I. c. 10; *Parl. Hist.* II. 853—855.

3) Statute 16 Charles I. c. 11. This statute deprived the crown of the power to issue a commission to try a person.

4) Stat. 16 Charles I. c. 1; repealed 16 Charles II. *Parl. Hist.* II. 718, 719.

5) The last concession of the king was his assent to the bill excluding bishops from parliament.

6) An act of parliament of the 19th May 1649 declared the people of England to be „a Commonwealth and Free State.“ The monarchy and house of lords were expressly abolished by resolution of parliament as being „unnecessary and dangerous to the liberties of the people“.

well,[1]) wisely as it was in many respects conducted, failed to bring contentment to the people. Men of all parties looked with serious apprehension on the continuance of military rule and longed to return to constitutional government.

A Convention Parliament met near the end of April 1660, and to this parliament Charles sent from Breda a declaration in which he offered freedom of conscience, an indemnity for past offences, and payment of arrears to the army. The parliament on receiving this declaration acknowledged Charles as king, and in May he returned to England. The Convention Parliament voted the subsidy of tonnage and poundage to the king for life, abolished military or feudal tenures, and declared in force all acts of the Long Parliament to which Charles I. had assented. The new parliament which met in 1661 was at first strongly royalist.[2]) It declared that there was no legislative power in either or both of the houses without the sanction of the king, that the sole command of the forces of the country was undoubtedly vested in the crown, and that neither house of parliament could lawfully levy any war, offensive or defensive, against the king. The parliament then proceeded, with the hope of extirpating Puritanism, to pass four persecuting statutes, viz. the corporation act, the act of uniformity, the conventicle act,[3]) and the five mile act. At the king's desire the triennial act of 1641[4]) was repealed.[5])

The profligacy of the court, the corruption of the officials, and the disasters of the war with Holland, led the parliament, in 1666 to pass an act for taking account of the supplies which had been voted, and commissioners were appointed for that

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1) „Where his own authority was at all concerned, this soldier of the Republic was more violent than any hereditary despot" (Clarendon XI. 172).

2) Known as the Cavalier or Pensionary Parliament, 1661—1679.

3) A second conventicle act, more stringent than the first, was passed in 1672.

4) *Parl. Hist.* IV. 290. 291.

5) The new parliament annulled the judgment against Sir John Elliot and his associates (15 Car. II.), and liberty of speech of members was henceforth never again called in question (Hatsell, *Procedure*, I. 86, 208 seq., 251 seq.).

purpose. From this time it was a recognized principle that supplies should be applied only to their specific objects.[1]) In 1672 the king attempted to legislate in ecclesiastical matters, and issued the declaration of indulgence, suspending all the laws which imposed penalties on religious opinion;[2]) but when parliament met the following year it compelled Charles to recall the declaration, and the same year passed the test act, which excluded all but members of the Church of England from any public office.[3]) In 1678 Lord Danby, the treasurer, was impeached of high treason[4]) on account of his negotiations with Louis XIV.[5]) Danby pleaded the command of the king for what he had done; but the commons once more asserted the responsibility of ministers to parliament. Danby then pleaded a pardon which he had obtained from the king; but the commons held that the king could not stop the process of an impeachment by

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1) Clarendon, the Lord Chancellor, had attempted to resist the encroachments of the house of commons, but in 1667, being impeached by the house, he was forced to fly.

2) As early as 1662 Charles, for political reasons, wished to grant liberty of conscience to the Catholics. This would have been carrying out in part the Declaration of Breda. In 1663, however, the commons presented him with an address, in which they denied that he was in any way bound by the promises of the Declaration, and gave him to understand that he did not possess that dispensing power which he claimed. Charles was soon to experience the truth of his father's saying, that „Parliaments, like cats, grow cursed with age".

3) 25 Car. II. c. 2. By this act James, duke of York, was obliged to resign the office of lord high admiral, and Clifford that of treasurer. Thus the Cabal was broken up. The final overthrow of the policy of the Cabal was secured when the commons compelled the king, by a threatened refusal of supplies, to conclude a separate peace with Holland. In 1678 the papists disabling act was passed, excluding Roman Catholics from parliament (repealed 1828).

4) During this reign forty ministers and high officials were impeached.

5) Danby's views and methods of government are shown by the attempt in 1675, to render an oath against resistance to the royal authority in all cases, and against any attempt to change the government of church or state, obligatory on all placeholders and all members of either house of parliament. Again, in the parliament of 1677, for maintaining that the late lengthened prorogation of parliament was illegal, Lords Shaftesbury, Salisbury, Wharton, and the Duke of Buckingham were imprisoned in the Tower, where they remained for more than a year.

granting a pardon before sentence had been given.[1]) In order to save Danby the king dissolved parliament, but the next parliament decided that a dissolution did not break off an impeachment once begun.[2]) In this parliament, the third that Charles had summoned, a bill was introduced to prevent the duke of York from succeeding to the crown, but before it could be passed in the lower house the king dissolved parliament.[3]) In this brief parliament time had been found for one great statute, namely, the act of *habeas corpus*.[4])

In 1665 the revocable appointment of judges was resumed, and led to an abuse of the royal right of appointing which had already characterized the two previous reigns. During this reign three lord chancellors, three chief justices, and six justices were dismissed for political reasons,[5]) their places being filled by creatures of the king. Thus by means of corrupt, venal, and servile judges the political trials were conducted in accordance with the wishes of the king. With their assistance he compelled the city of London and the boroughs throughout England to surrender their charters, in return for which new ones were conferred which restricted municipal privileges to a very limited number of persons in each town.

In 1683 the Rye-house plot for the assassination of the king was revealed by one of its members. The discovery of the plot and punishment of the members rendered Charles for the time absolute. He was enabled to disregard the law and to continue beyond the time fixed by law without a parliament, and he was

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1) This question was settled in favour of the commons by the act of settlement in 1701.

2) This question was also decided in favour of the commons in the course of the impeachment of Warren Hastings.

3) In the next parliament the exclusion bill was passed in the lower house but rejected by the lords, whereupon the commons refused to pass any money bill till the exclusion bill was carried. In the fifth and last parliament of this reign a new exclusion bill was introduced, but as the commons would listen to no compromise, the king dissolved the parliament.

4) Shaftesbury was the prime author of this act (Gneist *op. cit.* 602).

5) Foss, VII. 4.

also able to allow the duke of York, contrary to law, to take his seat again at the council, and again to have the management of the navy.

James II., the last king who held the crown by Divine right, had less sense but more energy than his brother. In the first moment of excitement he declared in a speech to the council, his determination to rule constitutionally and before all things to support the English Church. Contrary to this declaration, however, one of his first acts was to order that the custom duties should continue to be paid as hitherto, though they had legally expired with the death of the late king.

The parliament which assembled on the 22nd May 1685, was almost wholly composed of Tories, and proved its loyalty by settling upon the king for life a revenue of nearly £ 1,900,000 sterling. Greatly encouraged, and with his authority strengthened by the unsuccessful rebellion of Argyle and Monmouth, James thought he could bring about the repeal of the test and the *habeas corpus* acts, and the creation of a standing army, thus securing to Roman Catholics a monopoly of office and emolument and establishing the royal supreme power. But the parliament at its second session would not hear of repeal, and refused to grant supplies for a standing army. On account of the king's violation of the test act, a petition against this infringement was carried in the house, at the same time the supplies granted only amounted to half what the king demanded.

The king, by means of his ecclesiastical supremacy, established the court of ecclesiastical commission, similar in aims to the old court of high commission which the long parliament had abolished. He exercised his prerogative of dispensing with penal statutes in England and suspended their action in Scotland, especially in regard to the appointment of Catholics, and in this he was sustained by a subservient bench of judges.[1])

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1) James filled the king's bench with his own creatures, and in three years went so far as to dismiss twelve judges. Herbert and Withers were in 1685 dismissed from the king's bench for refusing to issue a legal decree at the king's behest; Jones, Montagu, Charleton and Nevil were dismissed in 1686

Being upheld by the courts he was emboldened to publish a declaration of Indulgence in 1687, and another in the following year. By these declarations he suspended not only the statutes which inflicted penalties upon Roman Catholics and Nonconformists, but also the statutes which excluded them from any kind of preferment.[1]) The chief unconstitutional acts of this brief reign may be summarized as follows: — (1) The admission of papists into the public service; (2) the establishment of the high commission court; (3) the dismissal of officers for refusing to support the policy of the court; (4) the confiscation of the charters; (5) the degradation of the judicial bench; and (6) the trial of the bishops for a respectful petition.[2])

On the 22nd of January 1689, William of Orange summoned, by the advice of the peers, a Convention Parliament. On the 28th of January the commons declared that „King James II., having endeavoured to subvert the constitution of the kingdom by breaking the original contract between king and people, and by the advice of Jesuits and other wicked persons having violated the fundamental laws, and having withdrawn himself out of the kingdom, had abdicated the Government, and that

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because of their scruples as to the king's power of dispensation, and Powell and Holloway in 1688, on account of their vote in the trial of the seven bishops (Gneist, *op. cit.* 600).

1) James, wishing to suspend the test act, obtained a decision from the judges, that the laws were „the King's own laws", from which the dispensing power of the king was deduced. After the expulsion of James II. not one of the ten judges who were then in office was found worthy of being retained. Henry III. and his Plantagenet successors had frequently made use of the *non obstante* clause. Attempts were however made to restrain it, and its use did not pass without remonstrance (Math. Paris, *Hist. Major*, ed. 1640, 854).

2) As the rights of parliament became more and more firmly established, the sphere for the exercise of the royal prerogative became more and more limited and circumscribed. The attempts made by James I. and Charles I. to undermine the foundations of the parliamentary constitution, having proved perilous, were not repeated. But on the other hand, after the Restoration, and in the following century, the royal control of the administrative and legislative machinery by wholesale bribery, shameless abuse of the appointing power, intimidation of juries, traffic in titles, control of elections, and intimidation of members of parliament, was assured.

the throne had thereby become vacant.“ And further, „that it hath been found by experience to be inconsistent with the safety and welfare of this Protestant kingdom to be governed by a popish prince.“

On the 13th of February 1689, the Convention offered the crown to William and Mary jointly, accompanying the offer by the presentation of the Declaration of Rights,[1]) asserting the „true, ancient, and indubitable rights of the people of this realm.“

The Convention Parliament which was converted by act into a regular parliament, enacted three important measures, -- the mutiny act, the toleration act,[2]) and the Bill of Rights. By the mutiny act[3]) special laws were provided for enforcing discipline in the army and special courts created to administer these laws. The act was made for a year only, but was henceforth passed annually; thus enabling the parliament to exercise a control over

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1) After the flight of James the Declaration of Rights was drawn up, which defined the royal authority and further restricted it. It covered in the main the points in which the rights and privileges of government had in the last reign been abused, and it was signed as a preliminary to his election by the Prince of Orange. It runs thus: — Declaration of Rights, asserting the „true, ancient, and indubitable rights of the people of this realm“. (1) That the making or suspending law without consent of parliament is illegal. (2) That the exercise of the dispensing power is illegal. (3) That the ecclesiastical commission court and other such like courts are illegal. (4) That levying of money without consent of parliament is illegal. (5) That it is lawful to petition the king. (6) That the maintenance of a standing army without the consent of parliament is illegal. (7) That it is lawful for Protestants to keep arms. (8) That elections of members of parliament must be free. (9) That there must be freedom of debate in parliament. (10) That excessive bail should never be demanded. (11) That juries should be impaneled and returned in every trial. (12) That grants of estates as forfeited before conviction of the offender are illegal. (13) That parliament should be held frequently.

2) The toleration act of 1689 was the first legal recognition of diversity of religious opinion.

3) 2 William and Mary, c. 5, sess. 2, c. 14. The power of the sword is thus only given for a year to the sovereign, the act being passed yearly and for a year each time. Questions of peace and war, which are peculiarly within the province of prerogative, have been determined not infrequently by the interposition of parliament. From the reign of Edward III. parliament has been consulted by the crown, and has freely offered its advice on questions of peace and

the army. The Bill of Rights,[1]) passed 16th December 1689, was a parliamentary enactment of the Declaration of Rights, repeating the provisions of that paper, settling the succession as detailed, and enacting that no papist could wear the crown. In voting supplies the parliament assumed as a right the practice which had grown up during the reign of Charles I. of requiring estimates and accounts of supplies needed and used, and introduced the system of passing appropriations for specified objects from which they could not be diverted. The second parliament of William III. passed the triennial act,[2]) limiting the duration of parliament to three years. The intermission of parliament for more than three years was once more forbidden by this act.

The Act of Settlement,[3]) which was the work of the fifth parliament of this reign, not only settled the order of succession to the crown, but also contained some provisions of great constitutional importance. It was enacted that whosoever should hereafter come to the possession of the crown was to join in communion with the Church of England as by law established. It was enacted that no person who had an office or place of profit under the king, or received a pension from the crown, should be capable of serving as a member of the house of com-

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war (Edward III., *Parl. Hist.* I. 122; Henry VII., *Ibid.* 452; James I., *Ibid.* 1293; Anne, *Ibid.* VI. 609). Thus this is not a modern invasion of the royal prerogative, but an ancient usage. But not until the power of parliament had prevailed over prerogative had it the means of enforcing its advice. At the present time the sovereign can never enter into any war, or pursue any negotiation, without a positive certainty that the parliament will assent to it and support the necessary operations, whether of hostility or commercial regulations (Brougham, *Works*, XI. 254).

1) The Bill of Rights concludes in these words: — „And they do claim, demand, and insist upon, all and singular the premises, as their undoubted rights and liberties“ (Stat. 1 William and Mary, sess. 2, c. 2).

2) This act (Stat. 6 William and Mary) remained in force till the passage of the septennial act (1 George I. ch. 2, c. 38).

3) 12 and 13 William III. c. 2. This enactment illustrates the decay of the belief in the hereditary right of succession. The exclusion bills of the previous generation had been defeated by the force of this belief. But now a Tory parliament passed a law to set aside the hereditary right of succession whenever the next heir to the crown was not in communion with the Church (*vide* Appendix D).

mons.[1]) It was enacted that the sovereign of Great Britain should not leave the kingdom without the consent of parliament; that the country should not be involved in war for the defence of the foreign possessions of the sovereign; that no foreigner should receive a grant from the crown, or hold office, civil or military; that ministers should be responsible for the acts of the sovereign, and that judges should hold office for life unless guilty of misconduct.[2])

The principal constitutional events of the reign of Anne were the parliamentary union of England with Scotland in 1707, and the attempt to restore the intolerant church policy of the reign of Charles II. by the passage of the schism act and of the bill against occasional conformity.[3])

The Accession of the House of Brunswick to the Extinction of Personal Rule and Establishment of Popular Government.

England had been slow to accept the principle of succession by parliamentary instead of hereditary right. Since 1688 the struggle had been continuous, and had reached a crisis in the closing years of Anne. But with the death of the queen the power of the Tories came to an end. The new dynasty was well aware that from them nothing was to be expected but indifference, and the king willingly therefore placed himself in the hands of the Whig party. William III. had found himself similarly placed, but he knew something of English politics whereas

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1) This clause in the Act of Settlement was directed against placemen and pensioners, but in a few years it had to be repealed. It was then enacted that only persons holding offices created since 1706 were to be incapable of sitting in the house; but it was added that a member accepting any office under the crown, other than a commission in the army, should be obliged to offer himself for re-election.

2) Nearly every clause of this bill seemed aimed against the king's former conduct.

3) The bill against occasional conformity was passed in 1711, and the schism act in 1714; both measures were repealed in 1718.

George I. knew nothing. George therefore confined his attention to the politics of Germany, especially as they related to Hanover. The care of governing England he devolved upon the party which could be trusted to defend his title to the throne. His indifference to English politics was productive of two important results. The first was to make the Whig party, or Whig oligarchy, supreme in England for nearly half a century; the other was to reduce yet further the power of the crown, already so much diminished by the Revolution.[1])

More important than any legislative innovation made during the reign of the first two Georges, was the development of the cabinet in the modern sense. At the accession of the Tudor dynasty the custom was revived of the monarch presiding at the meetings of the council. This practice was continued during the period of the Stuart kings, and after the Revolution by William III. and Queen Anne, the latter presiding regularly at the weekly cabinet councils.[2]) George I., being unable to speak the language, thought it useless to attend the meetings of the ministers, and by the end of George II.'s reign it had become „unusual" for the king to be present at deliberations of the council. But there occurred one instance of the practice soon after the accession of George III.[3]) Since that time it has become the firmly established usage of the constitution that the

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1) A measure known as the peerage bill, but which never became law, illustrates the weakness of the crown at this period and the aristocratic tendencies of many of the Whigs. In the session of 1719 the ministers introduced a bill depriving the crown of the power of indefinite peer creation, and providing that the number of peers should never exceed by more than six the number then actually existing, and that the king should have power only to keep the number up to that limit. In the previous reign (1712) Harley and St. John had made use of the royal prerogative to neutralize the influence of the Whigs in the upper house by the creation of twelve new Tory peers, which gave them a permanent majority in that body. Pitt greatly extended the influence of the crown in the house of commons, and diminished the importance of that body, by transferring many of his adherents among the landed gentry to the upper house (Brougham, *Works*, XI. 268).

2) Hardwicke, *State Papers*, II. 482; Campbell, *Chan.* IV. 287.

3) Waldegrave, *Memoirs*, 66; Harris, *Life of Hardwicke*, III. 231.

cabinet consults together apart from the sovereign.[1]) With the rise of party government the absence of the king from the meetings of his ministers became all the more an obvious necessity. The king being prevented by his position from making common cause with either party, party government could not be complete until the king was practically deprived of his share in governing.

George the Third was twenty-two years of age when he ascended the throne. Though possessed of a narrow understanding, he was laborious, resolute, and had a genuine wish to be a good king. He was not wanting in kingly virtues, nor, thanks to his training, in princely prejudices.[2]) His education, otherwise neglected,[3]) had raised his estimate of the personal rights of a king in the government of his people. In 1752 complaints had been made that the prince was surrounded by Jacobite preceptors, who were instructing him in arbitrary and unconstitutional principles of government.[4]) His mother, the Princess Dowager of Wales, „whose ambition yielded to none,“ [5]) had taught him high notions of prerogative (her ideas of the right and authority of a sovereign being derived from German courts), and had encouraged him with the oft-repeated exhortation of „George, be King.“ [6]) Her constant friend and adviser in this and other family matters had been Lord Bute, then Groom of the Stole, who had thereby acquired the greatest influence over the young prince. The views which filled his mind were those Bolingbroke had developed in his „Idea of a Patriot King.“ [7]) The beneficent rule of a powerful monarch governing his people by his own will, but for their good, was the ideal he had been taught to set before him.

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1) Campbell, *Chan.* III. 191.

2) Waldegrave, *Mem.* 9.

3) Dodington's *Diary*, 171; Walpole, *Mem.* I. 55; Brougham, *Works*, III. 11.

4) *Vide* debate in house of lords, 22nd March 1753; Walpole, *Mem.* IV. 139; Dodington's *Diary,* 190, 194, 197, 228.

5) Walpole, *Mem.* I. 12; Adolphus, *Hist.* I. 12.

6) Rockingham, *Mem.* I. 3.

7) *Works*, IV. 274, 281, 282.

He was ambitious and resolved not only to reign but to govern, and would not be content with that division of power which gave the substance to the Whig aristocracy and the shadow to the Hanoverian king. His first duty therefore was to free the prerogative from the state of captivity and servitude into which it had fallen during the reign of the first two kings of his house, by breaking down the confederacy of the great Whig oligarchy.[1]) His second object was to annihilate party government by restoring to the crown its freedom of choice and action. He wished personally to direct the administration of public affairs and the policy of his ministers, and himself to distribute the patronage of the crown. He had a strong will, plenty of courage, and some talent for intrigue; and it was with the deliberate intention of restoring the royal authority, and thereby exalting the kingly office, that the young king began his reign, and of this object he never lost sight.

Nor was this scheme as impracticable as at first sight it might appear. George had been brought up on English soil, and could say in his first speech to a new parliament, „Born and educated in this country, I glory in the name of Briton.“ [2]) He was popular with the mass of his subjects; he was especially popular with the Tories. The great majority of the Tories had never been earnest Jacobites, and after the failure of the rebellion of 1745, the Jacobite party was virtually extinct.[3]) The Tories could therefore indulge their natural disposition to support the royal prerogative by rallying round the young monarch. The Whigs were suffering from the ill effects of too much prosperity. Political power still remained in their hands, but they were now broken up into a number of small factions,[4]) held together by

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1) *Grenville Papers*, II. 117.

2) Rose, *Corresp.* II. 189.

3) „They abjured their ancient master; but retained their principles“ (Walpole, *Mem.* I. 15).

4) „This was the age of small factions“ (Lord John Russell, Introd. to vol. III. *Bedford Corresp.*).

alliances rather than by union, and representing great families or cliques rather than great principles.

The system of government which the king found at his accession did not please him. He was jealous of ministers who derived their authority from parliament. He wished to choose them himself, to direct their policy, and to dismiss them when they ceased to comply with his wishes. Having determined to be himself the ruler, he could tolerate no independent will in the government. In accordance with this view he drew up his first speech to parliament without consulting the secretary of state.

With the dissolution of parliament the changes in the ministry began. The first object of the king and his secret councellors was to get rid of Pitt and the existing ministry. Pitt had resolved to declare war against Spain which had concluded a secret treaty of alliance with France against Great Britain.[1]) His colleagues shrank from taking so bold a step, and the king supporting them, the minister was forced to resign. Lord Bute and three of his followers, Legge, Townshend, and Dashwood, were now admitted to the cabinet. The Duke of Newcastle, who had kept all patronage in his hands, found places filled without his knowledge, and complained that he was met with the uniform answer that it was the king's desire. In May 1762, he resigned; and Bute, who was already practically supreme in the council, became prime minister. The king and Bute now proceeded to carry out by intimidation and other means their favourite principles. These were peace at almost any price, the abandonment of continental connections, the humbling of the Whig party, and the restoration and increase of the power of the crown. The king seized the opportunity of the passage of the Peace of Paris through parliament to begin his attack on the Whigs. By means of the purchase of votes,[2]) the victory

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1) *Ann. Reg.* 1761, 43; *Grenville Papers*, I. 391, 405; Chatham, *Corresp.* II. 159.

2) The paymaster's office became a shop for the purchase of votes, £ 200 being the least price given.

remained with the king. All who ventured to express disapproval of the peace were made to feel the king's displeasure. Not only privy councillors and lords-lieutenant, but many petty officers and public servants were dismissed for this offence.[1])

Lord Bute had neither the ability nor the resolution necessary to carry out the unconstitutional policy of the king, but this was scarcely sufficient reason for his sudden resignation, which may have been due to his intense unpopularity, and his preference for the irresponsible power of the favourite to the dangers and responsibility of the minister. He named Grenville for his successor, but failed to find in him so pliant a tool as he had hoped, as the latter was as fond of power as the king himself. The chief claims of the Grenville or Triumvirate ministry to distinction were its arbitrary proceedings against Wilkes, the taxation of America, which he himself is said to have suggested,[2]) and its depriving military officers of their commands for political opposition. General Conway and others for their votes in parliament had been deprived of their commands and positions.[3]) Thus the privileges of parliament no longer afforded protection against the king's displeasure. The right of freedom of speech in parliament which had been asserted for centuries,[4]) was again placed in jeopardy, and members who exercised their right of opposing the measures of the government did so at their peril.[5])

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1) This success was followed by the wholesale dismissals from office of those who owed their positions to Whig patronage. The duke of Devonshire, for declining to attend a cabinet council, was rudely deprived of the office of chamberlain, and the king with his own hand scratched his name off the list of privy councillors. All placemen who had voted against the peace were dismissed. Newcastle and Rockingham were removed from their lord-lieutenancies. Lord Shelburne, General Conway and Colonel Barré, were deprived of their commissions for their votes on the question of general warrants. Earl Temple and many others, including even tax-gatherers and custom house officials, experienced the effects of the royal displeasure.

2) Bancroft, *Amer. Rev.* III. 307.

3) Chatham, *Corresp.* II. 275; Walpole, *Mem.* II. 65.

4) *Rot. Parl.* III. 456, 611; 4 Henry VIII. c. 8.

5) „To commit General Conway to prison as James I. had committed Sir Edwin Sandys, and as Charles I. had committed Selden and other leading mem-

Yet to this violation of their freedom, the commons submitted with scarcely a murmur.[1]) The king had virtually ceased to depend upon the advice of his favourites, and assumed direct control of legislation, administration, and patronage.[2])

In 1765 the king had his first attack of insanity, and on his recovery he desired a regency bill to be passed.[3]) Acting on the advice of Grenville he consented to the exclusion from the bill of the name of the Princess Dowager, on the ground that were it inserted, the commons would demand its omission. On the contrary however, on the introduction of the bill, a large majority of the house voted for its insertion, and it became obvious to the king that he had been the victim of a trick. For this he could not forgive Grenville, and he at once set about

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bers of the House of Commons, could not now have been attempted. Nor was the ill-omened venture of Charles I. against the five members likely to be repeated; but the King was violating the same principles of constitutional government as his arbitrary predecessors. He punished as far as he was able those who had incurred his displeasure for their conduct in Parliament; and denied them the protection which they claimed from privilege and the laws of their country" (May, *Const.* I.).

1) *Parl. Hist.* XVI. 1765.

2) *Bedford Corresp.* III. 264.

3) George III.'s first attack of insanity in 1765, it appears, was concealed from the public (Adolphus, I. 175; Mahon, v. 96). The letters of Lord Grenville, 1788—89, in the *Buckingham Papers*, show that the ministers had at that time no suspicion of his having been previously insane. The king's second attack occurred in 1788—89, and he was declared incapable of carrying on the business of the country; the third attack, 1801, deprived him of reason and his condition was considered critical; in the fourth, 1804, his mind was not so alienated as in the two previous illnesses; by the fifth and last attack in 1810, he was wholly bereft of reason and rendered nearly blind. The illnesses of George III. involved political considerations of great importance, affecting the prerogative of the crown, the rights of the royal family, the duties of ministers, and the authority of parliament. The laws of England recognized no incapacity in the sovereign, and made no provision for his guardianship. During the illness of the king in 1788, Pitt produced a very stringent bill, which refused the Prince of Wales the right of making peers or granting places, the principle being that as the king was likely to recover, he should on resuming his functions, find things as little altered as possible. To this proposed bill the royal assent was given by a commission in the king's name; but had it become law it would have established a dangerous precedent, as it would have shown that

getting rid of him. For seven weeks, according to Walpole,[1]) the country was practically without a government. The duke of Cumberland had applied to Pitt to form a ministry, and the latter had stated his terms. These were, that an alliance with the Protestant powers of Europe should be formed to balance the family compact, that general warrants should henceforth be declared illegal,[2]) and that officers dismissed for political reasons should be restored. These conditions the king was prepared to concede, and everything seemed to promise success, when Pitt, after an interview with his brother-in-law, Earl Temple, decided that his obligations to him would prevent his taking office.[4]) Thus the king was thrown back into the hands of his old ministry. But he now determined to rid himself of them, even at the cost of accepting the Whigs. After further futile negotiations with Pitt, he surrendered himself to the very men whom he most dreaded. Under the Rockingham ministry, which now succeeded, many of the obnoxious measures of the preceding ministry were repealed. The proscription of Whig nobles and their adherents ceased for the time, and general warrants were condemned. This administration, according to Burke, also „discountenanced, and it is hoped for ever abolished, the dangerous and unconstitutional practice of removing military officers, for their votes in Parliament.“ [5])

But the king continued to direct the policy of his ministers, especially in the disputes touching the taxation of the American colonies. The ministry had also to contend against the oppo-

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parliament could legislate without a king, and that the crown was but a name and without real authority. On this occasion Pitt claimed for parliament an absolute authority to nominate any regent it might please, even without the sanction of the crown.

1) *Memoirs*, II. 192.

2) General warrants had already been declared illegal in 1763 by the Lord Chief Justice.

3) Walpole, *Mem.* II. 165.

4) Temple had come to terms with George Grenville, and was planning a family Grenville Ministry.

5) „Short account of a Late Short Administration.“

sition of office holders and pensioners to measures which they approved.[1]) This system, said Burke, „produced neither the security of a free government, nor the energy of a monarchy that is absolute.“[2]) The ministry, after trying in vain to induce Pitt to join them, were dismissed in July 1766. The government of Rockingham had been distinctly a party government, and his policy was much too liberal and independent to please the king.

Pitt was now induced to accept the administration, though the duke of Grafton nominally held the office of prime minister, Pitt taking a peerage as Lord Chatham and the office of privy seal. He first tried to win the Bedford party, but he would not give them enough. He then proceeded to introduce a number of Tories and courtiers into the administration, thus deliberately assisting the king in his great scheme, — the destruction of party distinctions.[3]) After October 1768, Chatham resigned office, and the king was again left entirely free to direct the administration of affairs.[4]) Grafton without views of his own, was nothing but the passive instrument of the royal will.

On the retirement of Grafton in January 1770, George with much quickness and decision took advantage of the disunion and want of cordial alliance among the opposition. To him it was of paramount importance to retain his friends in office and to avoid a new parliament elected in the present excited state of the nation. The king sent immediately for Lord North, the

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1) Walpole, *Mem.* II. 322; Rockingham, *Mem.* II. 53; May, *op. cit.* I.

2) „Present Discontents“, *Works*, II. „It is the nature of despotism“, says Burke, „to abhor power held by any means but its own momentary pleasure; and to annihilate all intermediate situations between boundless strength on its own part, and total debility on the part of the people. To get rid of all this intermediate and independent importance, and to secure to the court the unlimited and uncontrolled use of its own vast influence, under the sole direction of its own private favour, has for some years past been the great object of policy“ (*Present Discontents*, I. 314, 315).

3) Burke says, when Lord Chatham „had accomplished his scheme of administration, he was no longer minister“ (Speech on American Taxation, Rockingham, *Mem.* II. 143).

4) Walpole, *Mem.* III. 62, 67 n.

chancellor of the exchequer, who reconstituted the old ministry. North was favourable to prerogative, and during his administration the power of the crown still further increased. With his accession the unstable character of the government ceased. Resting on the king, being but the instrument for carrying out the arbitrary measures of his master, and thus commanding the support of all royal influence, North was able to bid defiance to all opposition for years.[1]) Thus far the crown had been strengthened by the support of the people, who were willing enough to assist the king in weakening the power of the Whig party. Thus during the first ten years of constitutional struggle the policy of the king had triumphed. During this period and that which followed, the royal authority was constantly employed in the repression of liberty, both at home and in the colonies; and this principle, Lord North, sustained by a servile and corrupt house of commons, was able to uphold.

The king had been much distressed and displeased by the disgraceful marriages contracted by two of his brothers and by other members of the royal family. With the view therefore of guarding against such matrimonial alliances in future the royal marriage bill was passed. In 1718 George I. maintained that he had the power, by virtue of his prerogative, to direct the education of his grandchildren and also to dispose of them in marriage to the exclusion of the authority of the prince. This question was decided in the king's favour.[2]) George III. now asserted in the present bill that no descendant of George II., save the issue of princesses married abroad, should be capable of contracting matrimony before the age of twenty-five without the king's previous consent; otherwise the marriage should be null and void. After that age they must give twelve months' notice of their intended marriage to the privy council, unless in the meantime it be petitioned against by both houses of parliament.[3]) In 1718 this assertion of the prerogative was

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1) *Parl. Hist.* XVI. 842; Walpole, II. 95 n.

2) Blackstone, I. 219.

3) Fox resigned his seat at the Admiralty Board in order to oppose this measure.

sustained by judicial opinion only in so far as it applied to the grandchildren of the monarch. George III. claimed the right of control over the marriages of his brothers, uncles and cousins. This question was first submitted for an opinion to the judges: — „Is the King entrusted by law with the care and approbation of the marriages of the descendants of his late Majesty George II., other than his present Majesty's own children during their minorities?“ As the question propounded embraced all the descendants of the late king, without as well as within the kingdom, nine judges answered it in the negative, but they admitted the care [1]) and approbation as applied to the children and grandchildren of the king and of the heir presumptive to the crown; „but to what other branches of the royal family such care and approbation extend, we do not find precisely determined.“ [2]) It might be reasonable to prescribe rules against the marriage of members of the royal family with a subject, or with a Roman Catholic, without the royal consent, but this arbitrary measure [3]) not only extended the minority of princes and princesses to twenty-five, but gave the king the sole and absolute control over royal marriages. Moreover by means of a parliament subservient to the crown the marriage could be perpetually prevented. But here again the personal will of the king was supreme against all opposition, and towards those who opposed him he was implacable.[4])

The king was determined upon the suppression of insubordination in America, and the destruction of Wilkes in England, but at the final outcome the victory remained with the

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1) The prerogative of the king touching the education of his grandchildren, which had been established in 1718, was again asserted in 1804 in regard to the princess Charlotte, of whom the king claimed the guardianship.

2) *Parl. Hist.* XVII. 387.

3) Lord Chatham, in a letter to Lord Shelburne, 3rd April 1772, thus expressed himself touching this bill: — „The doctrine of the Royal Marriage Bill is certainly new-fangled and impudent, and the extent of the powers given, wanton and tyrannical“ (*Corresp.* IV. 203).

4) While the bill was pending in parliament the king wrote to Lord North as follows: — „I expect every nerve to be strained to carry the Bill. It is not

colonies and with Wilkes.[1]) When Lord Chatham was about to move an address for dissolving parliament in connection with the Wilkes affair, the king's resentment knew no bounds. He was even prepared to resist what he deemed an invasion of his prerogative, by military force.[2]) During the negotiations in 1778 for the admission to the ministry of Chatham and other leaders of the opposition, he said in a letter to Lord North (15th March), „Honestly, I would rather lose the Crown I now wear, than bear the ignominy of possessing it under these shackles."[3]) Had George understood his position as a constitutional king he would at this time have consented to form a new ministry from the leaders of the opposition. In 1779 it was openly avowed in the house of commons by Lord George Germaine, that the king was his own minister; and Fox lamented, „that his Majesty was his own unadvised minister".[4]) In the debate on the address at the opening of parliament, 25th November 1779, Fox again called attention to the fact that the king was his own minister.[5])

In the beginning of 1780 public meetings were held and petitions presented in favour of economic reforms. Complaints were made of the undue influence of the crown, and of the patronage and corruption by which it was maintained.[6]) On the 6th of April Dunning moved his famous resolution in a committee of the whole house, which by a majority of 18 passed slightly

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a question relating to administration, but *personally to myself;* therefore I have a right to expect a hearty support from every one in my service, *and I shall remember defaulters*" (Fox, *Mem.* I. 75, 76; Brougham, III. 79). This measure was reluctantly adopted by the ministers. It is evident from the king's language that no person who voted against the bill could continue to hold office under the crown.

1) On the 3rd of May 1782, the resolutions rejecting Wilkes as a member of parliament were expunged „as subversive of the rights of electors" (*Parl. Hist.* XXII. 1407).

2) Massey, *Hist.* I. 489.

3) Fox, *Mem.* I. 189; Brougham, *Works*, III. 108.

4) Fox, *Mem.* I. 203.

5) *Parl. Hist.* XX. 1120.

6) *Parl. Hist.* XX. 1370; *Ann. Reg.* XXIII. 85.

amended; „that the influence of the crown has increased, is increasing, and ought to be diminished“.[1]) In the upper house Rockingham observed: „It was early in the present reign promulgated as a Court axiom, that the power and influence of the Crown alone was sufficient to support any set of men his Majesty might think proper to call to his councils.“[2]) The motion of the Earl of Shelburne for an inquiry into the public expenditure was followed by an attempt at intimidation of peers, several being deprived of their lord-lieutenancies. At the meeting of parliament on the 27th of November 1781, complaints again arose in both houses of the crown influence. The duke of Richmond said that the „interior cabinet“ had been the ruin of the country.[3]) Rockingham[4]) and Fox[5]) spoke in the same strain.[6])

The year 1781 had been a most disastrous one for British arms, and greatly hastened the downfall of the now tottering ministry. Early in 1782, the commons presented an address against the further prosecution of offensive war to which they received an evasive answer. On the 27th of February General Conway moved, „that the house will consider as enemies to his Majesty and this country all who shall advise, or by any

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1) *Parl. Hist.* XXI. 347.
2) *Ibid.* XX. 1346.
3) *Ibid.* XXII. 651.
4) *Ibid.* XXII. 655.
5) *Ibid.* XXII. 706, 1064.
6) The systematic corruption of members of parliament is said to have begun under Charles II., in whose reign it was practised to the largest extent (Lecky, *Eighteenth Century,* I. 366). Out of 550 members of the first parliament of George I., 271 were placemen; and the first parliament of George II. contained 257 office-holders, pensioners and sinecurists (May, *op. cit.* I. 317). The place bill of 1743 did some good in excluding a certain number of inferior place-holders from parliament (Hallam, *Const.* chaps. XV. XVI.; Fischel, *English Const.* 433). Bribery at elections was condemned by a law of William III. (7 William III. c. 4), and another measure against it was passed in 1729 (2 George II. c. 24; *Parl. Hist.* XII. 648). The number of electors in the year 1768 is given by Massey (*Hist.* I. 338) as 160,000. The total number at the close of the century probably did not exceed 200,000.

means attempt, the further prosecution of offensive war on the continent of America, for the purpose of reducing the revolted colonies to obedience by force.“ This resolution was agreed to without a division.[1]) The motion of Sir John Rous on the 15th of March, „that the House could no longer repose confidence in the present ministers“, was lost by only nine votes.[2]) North saw that further struggle was hopeless, and on the 20th compelled the king to allow him to declare the administration at an end.

The king's influence during Lord North's ministry was paramount. „Not only did he direct the minister in all important matters of foreign and domestic policy, but he instructed him as to the management of debates in Parliament, suggested what motions should be made or opposed, and how measures should be carried. He reserved to himself all the patronage, -- he arranged the entire caste of the administration, settled the relative places and pretensions of ministers of state, of law officers, and members of the household, — nominated and promoted the English and Scotch judges, — appointed and translated bishops, nominated deans and dispensed other preferments in the Church. He disposed of military governments, regiments and commissions, and himself ordered the marching of troops. He gave and refused titles, honours and pensions. All this immense patronage was persistently used for the creation and maintenance in both Houses of Parliament of a majority directed by the King himself.[3]) Louis XIV. could not have been more royal: he enjoyed the consciousness of power, and felt himself every inch a king.“[4]) The defeat of the ministry on the Conway measure was a victory for the house, which, in spite of the great influence of the crown, had been able to bring to a close

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1) *Parl. Hist.* XXII. 1064, 1086, 1089.

2) *Parl. Hist.* XXII. 1171, 1172.

3) This immense mass of patronage which George kept so firmly in his own grasp, had been in the reigns of his Hanoverian predecessors practically usurped by the ministers of the crown.

4) May, *Const.* I. 50; Green IV. 252.

the American war. Lord North's resignation was the complete defeat for the time of the king's plans; but George was obstinate and determined, and he had no intention as yet of giving up the fight. Lord Shelburne having refused the premiership, Rockingham undertook to form a ministry consisting of equal numbers of the two sections of the liberal party.[1]) This ministry however, would have soon gone to pieces from its want of coherency, had not the death of Rockingham dissolved it. The king at once offered the premiership to Shelburne, and William Pitt,[2]) as yet but twenty-three years of age, became chancellor of the exchequer. Several of the old ministers retained their places, but Fox refused to serve under Shelburne, and the greater part followed their leader; and thus arose a split, which proved to be final, between the two sections of the Whigs.

Fox and North now combined to eject Lord Shelburne's government, and they chose as their test question the terms of the peace of Versailles and Paris. In parliamentary influence the coalition proved to be quite irresistible, and the minister finding himself in a minority upon resolutions which had been moved condemnatory of the peace, at once resigned. After some weeks of ineffectual struggles the king was again forced to yield to the combination against him, and to accept the coalition ministry (North and Fox) under the duke of Portland. Nothing could have been more distasteful to him; but this ministry which appeared so irresistible was destined to be of short duration, and the faction movement which seemed to have thwarted for ever the policy of the king, proved in the sequel the means of establishing his policy for the rest of the reign.

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1) Rockingham, Keppel, Lord John Cavendish, the Duke of Richmond, and Fox of the one party; Shelburne, Camden, General Conway, Lord Ashburton (Dunning), and the Duke of Grafton of the other. The Tory Lord Thurlow, the Lord Chancellor, held the balance between them. Fox said, „provided we can stay in long enough to give a good stout blow to the influence of the crown, I do not think it much signifies how soon we go out after" (*Mem.* I. 316, 317).

2) Who, to use the expression of Erskine, was „hatched at once into a minister by the heat of his own ambition" (*Parl. Hist.* XXIV. 277).

The attempts of the coalition to restrain the influence of the king [1]) so exasperated him, that he openly opposed his ministers and plotted to secure their downfall.[2]) He also threatened to leave the country and retire to Hanover.[3]) By the use of his name, and the tactics of 1766, „The King's Friends," — Fox's India bill, which had passed the lower house, was defeated in the house of lords.[4]) The action of the king in the house of lords caused great indignation in the house of commons, and provoked a resolution, „that to report any opinion of his Majesty with a view to influence votes is a high crime and misdemeanour derogatory to the honour of the Crown, a breach of the fundamental privileges of Parliament, and subversive of the Constitution." [5]) But the bill was rejec-

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1) North now said, „the appearance of power is all that a king of this country can have" (Fox, *Mem.* II. 38).

2) „When George II. found he was obliged to accept the united administration of the Duke of Newcastle and Mr. Pitt, he reluctantly released his faithful adherent Lord Waldegrave from the task, the latter pledging himself to be ready on all proper occasions to oppose his Majesty's ministers and his Majesty's son" (Waldegrave, *Mem.* 137). The opposition of George II. to his ministers (through his instrument Waldegrave) was doubtless exerted with due care and moderation. No king of the house of Hanover had been present at the deliberations of the legislature (Hatzell, II. 371n; Chitty, *Prerog.* 75).

3) „Nothing is more easy", said Lord Thurlow; „but you may not find it so easy to return, when your Majesty becomes tired of staying there" (May, *Const.* I. 55).

4) The king supplied Temple with a paper to show to any lord he pleased, the purport of which was, „that his Majesty allowed Earl Temple to say that whoever voted for the India Bill was not only not his friend, but would be considered by him as an enemy, and if those words were not strong enough, Earl Temple might use whatever words he might deem stronger and more to the purpose" (Buckingham, *Mem.* I. 288, 289). „Two systems of administration were to be found; one which should be in the real secret and confidence; the other merely ostensible, to perform the official and executory duties of Government. The latter were alone to be responsible, while the real advisers, who enjoyed all the power, were effectually removed from all the danger. Thus Parliament was to look on as if perfectly unconcerned, while a cabal of the closet and backstairs was substituted in the place of a national administration" (*Present Discontents,* I. 315, 316).

5) Comm. Journ. XXXIX. 842.

ted, and on the 18th of December the king dismissed the ministers, refusing even to see them personally.

Pitt, who had declined to form a ministry on the fall of the Shelburne administration, now came to the king's assistance, and in him a compromise between George and Fox was effected. But with his acceptance of the premiership a contest began which, to quote the words of Dr. Johnson, was to decide „whether the nation should be ruled by the sceptre of George III. or by the tongue of Fox." An address had been delivered to the king praying against either an adjourment or dissolution, to which his majesty had returned a favourable reply. The king had the undoubted prerogative of appointing and dismissing his ministers and of dissolving the parliament; the appeal of both in the last instance being to the people. But this appeal the commons wished to deny the king, and threatened to withhold supplies unless the Pitt ministry was dismissed.[1]) The opposition in thus endeavouring to force the king by a majority of the house went beyond the constitutional limits of their power. While the great struggle between Pitt and Fox was going on the king's anxiety was very great, and he wrote to Pitt as follows: — „Should not the Lords stand boldly forth this Constitution must soon be changed; for if the only two privileges of the Crown be infringed, — that of negativing bills which have passed both Houses of Parliament,[2]) and that of naming the

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1) From the thirteenth century to the Bill of Rights the commons had times without number asserted their right to grant taxes, and by means of this power they had again and again wrung concessions from arbitrary monarchs and thereby advanced the liberties of the people. In the time of the Stuarts it was no unusual occurrence for the commons to refuse to grant subsidies to the king (*Parl. Hist.* II. 35; IV. 757, 879, 1000, 1379). In 1781 it was proposed by a member to delay granting supplies for a few days in order to extort from North a pledge touching the American war. It was then admitted that no such proposal had been made since the Revolution (*Parl. Hist.* XXII. 751). The precedent of 1784 is the solitary instance in which the commons have exercised their power of delaying the supplies. They were provoked to use it by the unconstitutional exercise of the influence of the crown; but it failed of its object.

2) „I hope," he wrote to Lord North in 1774, „the Crown will always be able, in either House of Parliament, to throw out a bill; but I shall never

ministers to be employed, — I cannot but feel, as far as regards my person, that *I can be no longer of utility to this country, nor can with honour continue in this island.*“ [1])

But the attempts against the royal prerogative resulted after a brief though severe struggle in a complete triumph for Pitt and the king.[2]) The king had expelled one ministry and retained another in defiance of the house of commons. Not only had he overcome and ruined a party which he hated, but he had established the ascendency of the crown, which henceforth, for nearly fifty years, continued to prevail over every other power in the state. Hitherto it had been the policy of the king to employ men of little genius (who had been, with but few exceptions, pliant instruments for carrying out his personal wishes), instead of leaving the country to be governed, — as a free state should be, — by its ablest and most popular statesmen.[3]) The late triumph of the king would naturally tend to exalt his idea of prerogative, and he now possessed a minister whose views in most respects were in accord with his own,

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consent to use any expression which tends to establish that at no time the right of the Crown to dissent is to be used“ (Brougham, *Works*, III. 85).

1) Tomline, *Life of Pitt*, I. 341.

2) „Pitt had maintained the right of the King to appoint him, the duty of Parliament to consider his measures, and his own right to advise the King to dissolve Parliament, if those measures were obstructed.“ In 1675, in the reign of Charles II., parliament had assumed the right of advising the crown touching the exercise of the prerogative of dissolution (*Lords' Journ.* XIII. 33). But it was not definitely and clearly established until the year 1784, that where there is a conflict between the personal opinions of the sovereign and those of a majority of the house of commons, the latter, and not the former, is to prevail; unless, indeed, a dissolution and a new election should reverse the decision of the previous parliament. The precedent of 1784 established the rule that if the ministers chosen by the crown do not possess the confidence of the house of commons, they may advise an appeal to the people, with whom rests the ultimate decision. This course was followed in 1807, 1831, 1834, 1841, 1857 and 1859 (Lord J. Russell, *Mem. of Fox*, II. 245). After Pitt had by firmness and moderation overcome the opposition in the house, he advised the king to dissolve the parliament. The elections made it evident that the feeling of the nation was entirely with him, no less than 160 of Fox's friends having lost their seats.

3) Lord John Russell, Introd. to vol. III. *Bedford Corr.* 2 seq.

and to whom he could safely entrust the carrying out of the Tory principles of government and the guardianship of the rights of the crown.[1]) The power and influence of the crown now became nearly absolute. The king desisted to some extent from the independent exercise of his authority, but the royal power as wielded jointly by himself and his minister was greatly increased.[2]) Parliamentary opposition to such a combination was

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1) In a letter from William Pitt to Earl Temple, 22nd July 1783, it appears that Lord Thurlow had endeavoured, without expressing definite views of his own, or committing the king, to ascertain Pitt's political intentions, more particularly in reference to parliamentary reform and to the system of personal government of which Lord North's ministry had been an instrument. He throws out a suggestion that the king in accepting the coalition ministry had „gone through the worst." Pitt, at this time, declares frankly and clearly against the unconstitutional influence of the crown, and for electoral reform, and is disinclined to resume office except on these principles. (Dropmore Manuscripts, *Hist. MSS. Comm.* 13, app. pt. III. 215, 216).

2) Throughout Pitt's administration, as well as before it and afterwards, „every act and appointment was submitted to the king, not nominally but really for the purpose of his exercising a judgment upon it" (*Parl. Deb.* XXII. 334). The purely personal acts of George were legion. He forced Lord Holderness to retire from the wardenship of the Cinque Ports to make way for Bute (*Life of Hardwicke*, III. 242; *vide* also Rose, *Corresp.* II. 191, who gives a somewhat different account). In 1792 he conferred that office upon Pitt, and would listen to no recommendation in favour of any one else (Stanhope, II. 160). After the death of Pitt, he conferred it upon Lord Hawkesbury in the same way (Yonge, *Life of Liverpool*, I. 209). Against the wishes of Pitt he appointed Dr. Manners-Sutton to the see of Canterbury (Stanhope, IV. 252; Rose, *Corresp.* II. 82—91). He refused to confer a dukedom upon Earl Temple, and expressed his determination to grant no more dukedoms except to princes of the blood (Stanhope, I. 164; Fitzmaurice, *Life of Shelburne*, III. 419). Under George III. there were created 268 peers and 528 baronets. Langmead asserts (p. 702), that after Pitt's accession the king's will was no longer supreme, as during the administration of North. George was certainly powerful enough to force Pitt's resignation in 1801 on the Roman Catholic question, and on again taking office in 1804 the king refused to allow him to have Fox in the cabinet. Pitt put an end to the government of the faction of „the king's friends", but he did not put an end to the personal rule of the king. George says in a letter to Pitt, 18th February 1786, „It is very unpleasant to me to observe by Mr. Pitt's note that he has been detained at the House of Commons by the fertile imagination of Mr. Burke", etc. (MSS. of P. V. Smith, *Hist. MSS. Comm.* 12, app. pt. IX. 350).

futile, and if beyond the pale of the house complaints were made the arm of the law was strong and swift to silence them. Indeed to oppose the minister had become high treason to the state.[1]) Thus in Pitt, „the heir of the coalition," was found a minister whom the king would tolerate and the country support. But in spite of the king's confidence in and dependence upon Pitt, whenever their views of policy were at variance the temper of the monarch was as unyielding as ever. The fall of the great minister was due entirely to the personal will of his royal master.

At the assembling of the first united parliament of Great Britain and Ireland early in 1801, Pitt, in fulfilment of a vague promise to the Irish, was preparing a measure for the relief of the Irish Roman Catholics.[2]) The chancellor, Lord Loughborough, and Lord Auckland having pursuaded the king, so it was said, that to consent to any such measure would be a breach of his coronation oath,[3]) the latter stated openly to Dundas, that he „should hold anyone who supported it as his personal enemy." The king wrote to Pitt urging him to remain in office and to drop the measure, and suggested as a compromise that they both should agree to be silent on the subject; but Pitt was as determined as the king, so the latter accepted his resignation.[4])

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1) May, *Const.* I. 77.

2) „George III., and the majority of the nation, perceived in the Roman Catholic Church not merely an ecclesiastical but an essentially political institution, which owing to its extension over all the States of the inhabited globe, and to its claim to external sway over the life of nations, as well as to its pretensions to a complete recognition of sovereignty in its spiritual head, was incompatible with the constitution of the country. This view was so deeply rooted in George III., that all attempts made to pass an act of toleration were foiled by his unyielding will" (Gneist, *op. cit.* 713).

3) „I can give up my crown and retire from power; I can quit my palace and live in a cottage; I can lay my head on a block and lose my life; but I cannot break my coronation oath" (Lord Eldon).

4) Philpotts, *Quart. Rev.* XXXVI. (1827), 285—295. George proposed as a compromise „that he [the king] should maintain henceforth utter silence on the question, and that Mr. Pitt on his part should forbear to bring it forward"; but, adds the king, „further I cannot go" (Stanhope, *Life of Pitt*, II. 393).

George now had an attack of his old trouble, and charged Pitt with being the cause of it. Whereupon that statesman sent a message to the king in March, promising that whether in or out of office he would absolutely abandon the Catholic relief question during the king's reign.[1]) Thus he was willing to remain, upon the terms dictated by the king, at the head of the administration. But George had no desire for the return of either Pitt or Grenville; and Addington naturally objected to relinquishing the place he had just gained.

The new ministry was conservative, submissive, and without great ability, and according to the king's own letters he was now „freed from the restraint which the character and position of Mr. Pitt had imposed upon him, and now possessed a minister whose intellect was not so commanding as to overpower and subdue his own." But after three years of existence the weak and incompetent Addington ministry which had been mainly upheld by the influence of the crown,[2]) was obliged to make way for Pitt.[3]) On account of the war, Pitt wished to form a strong and comprehensive government, and to have as little opposition as possible. He therefore urged the admission of both Fox and Grenville to the ministry, but the king was inflexible; Grenville he would admit, but Fox never.[4]) Pitt consented to exclude Fox, but he still hoped to obtain the support of Grenville. The latter, however, declared that he would not take office without Fox. Thus finding the two sections of the opposition closed against him, the Foxites, — because their chief had been proscribed by the king; the Grenvilles, because he had acquies-

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1) Stanhope, *Life of Pitt*, III. 303—306; Malmesbury, *Diary and Corresp.* IV. 31; Colchester, *Diary*, II. 211.

2) Stanhope, *loc. cit.* IV. 161, 165.

3) The king disliked the return of Pitt and wished to retain Addington, whom he had found very complacent.

4) George said in a note to Addington, „Mr. Fox is excluded by the express command of the King" (Stanhope, *loc. cit.* II. 226). Pitt, speaking of the king's resolute determination at this time, said to Chancellor Eldon, „Never, in any conversation I have had with him in my life, has he so baffled me" (*Ibid.* 226).

ced in this proscription, — no resource was left to Pitt but to form a government upon a narrow Tory basis. Thus had Pitt again yielded to the prejudices of the king. Though he still had the confidence of the monarch, the latter continued to form his own independent opinions and to be guided by them. He still exerted a large influence in the distribution of the patronage and dictated the policy of the government.[4])

The death of Pitt on the 23rd of January 1806, was shortly followed by the breaking up of his cabinet, which was not so constituted as to be able to stand without him. The king was now obliged to turn to the opposition, and to summon Lord Grenville. This necessarily implied the admission into the cabinet of Fox, in spite of the king's aversion to him, as it was quite impossible, on account of the close political alliance they had formed, for either Grenville or Fox to accept office without the other. In this ministry, known as „the ministry of all the talents", was included with questionable wisdom Lord Ellenborough, the lord chief justice. It had been the policy of the English laws to render the judges independent of the crown,[2]) but now the first criminal judge became one of its confidential advisers. The appointment of Ellenborough was severely condemned both in debate and by public opinion, and it has since been held that such a position is incompatible with high judicial duties.[3]) Before the formation of the new ministry was entirely completed, the king took alarm at a supposed invasion of the royal prerogative. Lord Grenville had proposed some changes in the administration of the army, and that it should cease to be subject to the direct control of the crown, through the commander-in-chief. The king insisted that the control of the army rested with the crown alone, and the ministers could not interfere

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1) Rose, *Corresp.* II. 122, 124; Stanhope, *loc. cit.* IV. 233, 252).

2) 13 William III. c. 32; 1 George III. c. 23.

3) Campbell, *Justices,* II. 451; *Chan.* VI. 584.

4) The correspondence between the marquess of Buckingham, lord lieutenant of Ireland, and W. W. Grenville contains abundant evidence of the direct interference of the king in both civil and military appointments. The letters prove that George kept vigilant watch on Buckingham's exercise of military

beyond the levying of troops, their pay and equipment. To this view Grenville and Fox yielded, and promised that no changes should be introduced into the government of the army without the king's approbation.[1]) Thus the question remained in abeyance. The ministry now attempted to again bring forward a measure for removing so much of the disabilities both of the Roman Catholics and Dissenters as affected their position in the army or navy. But against the Catholic claims the king was set with inflexible determination, and every act of concession which was proposed he viewed with the utmost repugnance. A bill for the purpose of remedying a glaring anomaly touching the rank of Irish officers in England was laid before the king, and was supposed to have received the royal assent.[2]) The king's „friends" in parliament, however, were prepared to oppose the measure, had not the ministry deemed it advisable to withdraw it. Thus was the king again on the point of interfering with the freedom of parliamentary deliberations. After the measure was finally dropped the ministers drew up a minute of the cabinet, reserving to themselves the right of avowing their sentiments if the petition from the Catholics, which was at that time in preparation, was presented, and of submitting to the king from time to time such measures as they deemed advisable for the good

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patronage, carefully scrutinized his lists, demurred to every irregular nomination, and finally rejected all that were prompted by private partiality. On the 14th September 1788, Buckingham writes to Grenville as follows: — „I am at present in the most painful and doubtful situation. The king refuses not one or two, but almost every recommendation, whether connected with civil government, or pressed upon me by the Commander-in-Chief, or originating in private regard" (Dropmore MSS. *l. c.* 355). In spite of Pitt's renewed appeals the king unqualifiedly denied the request to bestow a dukedom on Buckingham (Buckingham-Grenville Correspondence, Dropmore MSS. *l. c.* 537—539). It may be mentioned in passing that the letters at Dropmore were never shown to either Buckingham, for his „Court and Cabinets of George III.," or Stanhope, for his „Life of Pitt".

1) *Ann. Reg.* 1806, 26; *Life of Sidmouth*, 415.

2) At first a clause merely was introduced into the annual mutiny bill enabling the king to confer military commissions on any of his subjects without distinction of religion, the object being to permit Roman Catholics to hold commissions in the army.

of the country. Upon this the king demanded from them a withdrawal of their minute, and a written declaration that they would never under any circumstances propose to him further concessions to the Roman Catholics or ever offer him any advice upon the subject.[1]) Such a pledge it was of course impossible for any constitutional ministers to give, and it was upon this point, — a point of real constitutional importance, — that the ministry were dismissed.[2]) Thus came to an end in March 1807, after not quite fourteen months' existence, the nearest approach to a Whig administration which was in power during the forty-seven years from 1783 to 1830.

On the 19th of March, the duke of Portland was instructed to form a new ministry. His health was such that his premiership could be little more than nominal, so that when Perceval became chancellor of the exchequer, he virtually assumed the lead of the new administration. The same exercise of prerogative that secured the ministry of Pitt and supported the weak ministry of Addington, now again introduced into the cabinet men entirely satisfactory to the king, — pledged to oppose the great liberal measures of the day, and really answerable for the unconstitutional pledge the king had demanded from his late ministry. The dismissal of the last ministry and the conduct of the incoming one provoked much comment. The constitutional danger involved in such an exercise of prerogative was discussed in both houses, and attempts were made to establish two points of constitutional law. First, that it is contrary to the first duties of the confidential servants of the crown to restrain themselves by any pledge, expressed or implied, from offering to the king any advice which the course of circumstances may render necessary for the wel-

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1) Colchester's *Diary*, II. 101—104; Rose, *Corresp.* II. 328—331.

2) *Vide* letter from Viscount Melville to the duke of Portland, 19th Oct. 1806, in which he speaks of the personal independence of the sovereign, his power to rid himself of an administration, and the security for the maintenance of the royal authority, etc. (Lowther MSS., *loc. cit.* 13, pt. VII. 211, 212).

fare and security of the empire;[1]) and, secondly, that it was impossible for the king to act without advice.[2]) In support of these doctrines the opposition thought themselves secure of a majority. But so great was the influence of the crown, and so strong the Protestant feeling of the country, that they found themselves in a minority of more than thirty. A speedy dissolution of parliament was determined upon, and the main issue raised by this appeal to the constituencies was the propriety of the recent exercise of prerogative. The appeal was successful, the new election placing the ministry in possession of a majority which secured its permanence. We have here the final triumph of the policy of George III. The will of the king had once more prevailed, and was not again to be called in question. His own power, confided henceforth to the Tory ministers, was supreme.[3])

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1) This flagrantly unconstitutional pledge, Sir Samuel Romilly maintained in parliament, would have rendered any ministers who gave it guilty of a high crime and misdemeanor (*Parl. Deb.* IX. 327).

2) In upholding this last point, Romilly asserted that there could be no exercise of prerogative in which the king could act without some advice. No constitutional doctrine is more important than this, for without it the king, who theoretically can do no wrong, would be answerable for his own acts. A resolution condemning the acceptance of pledges by ministers, which should bind them not to offer any advice to the crown, was moved in both houses. In the lords it was suppported by 90 against 171 votes; in the commons by 226 against 258 votes. Thus in the lower house the course taken by the king narrowly escaped a distinct censure (*Memoirs of Romilly*, II. 193—195).

3) Lord Grenville in his private letters (15th December 1808), attributes the continuance of the government in its existing state of weakness entirely to the support and influence of the king. Speaking of the ministers he says: — „If they change hands at all it can only be because they are quarrelling among themselves; for I am pursuaded, so long as the King chooses to continue them, these very men will command the majorities of both Houses with as much certainty as ever.“ He says again: — „I am satisfied these people or any people, may command under the King's influence a majority in Parliament; and it would have the appearance of a struggle for power, at a time when a man must indeed be of a most depraved ambition, to wish for the appearance and responsibility of governing the country, with the certainty that a Court intrigue would be incessantly at work, with ample means of depriving him of all power to be of real use“ (Buckingham, *Court and Cabinets,* IV. 288, 299).

Towards the close of the year 1810 the king became hopelessly insane, and in the February following the bill restricting the regent was passed, and the Prince of Wales took the oaths before the privy council. The prince with a better education, but with less ability and far less character than his father, was averse to business and the responsibilities of royalty, yet whenever his own feelings or interests were concerned he was almost as imperative as his predecessor. The Perceval ministry continued in office till the assassination of Perceval in May 1812. After much negotiation, the regent finally entrusted Lord Liverpool with the reconstruction of the old administration, and henceforth the ascendency of Tory politics which George III. had established, and which the regent had been expected to overthrow, was maintained more firmly than ever. By the influence of the crown it had been created, and by the same influence it was sustained during the regency and throughout the reign of George IV. All opposition being thus defeated, and the ministers and the court party being thus agreed, the prince regent had no further need of personal interference in the government of the country.[1]) The crown and its ministers continued to rule supreme over parliament, the press, society, and the public opinion of

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1) George IV., unlike his father, was always unpopular, even before he became regent, and this tended naturally to lessen his personal influence. Indeed, instead of his popularity supporting the ministry, the difficulty was for the ministry to support his unpopularity, and to uphold the respect for the crown when it encircled the head of such a sovereign (Lewis, 420, 421). That his conduct to his wife did not tend to increase the respect in which he was held, the following just remark made by Mr. Stuart Wortley (afterwards Lord Wharnecliffe) in 1813 amply shows: — „I have as high notions of royalty as any man, but I must say that all such proceedings contribute to pull it down. I am very sorry that we have a royal family who do not take warning from what is said and thought concerning them. They seem to be the only persons in the country who are wholly regardless of their own welfare and respectability. I would not have the Prince Regent lay the flattering unction to his soul, and think his conduct will bear him harmless through all these transactions. I say this with no disrespect to him or his family; no man is more attached to the House of Brunswick than I am, but had I a sister in the same situation with her Royal Highness the Princess of Wales, I should say that she was exceedingly ill-treated“ (*Parl. Deb.* XXIV. 1152; *Memoirs of Horner*, II. 142).

the country. In 1822 Mr. Brougham introduced a resolution on the subject of the influence of the crown. He declared that the influence of the crown was „unnecessary for maintaining its constitutional prerogatives, destructive of the independence of Parliament, and inconsistent with the well-governing of the realm.“ He pronounced the influence of the crown to have been greatly increased since Dunning's famous resolution in 1780. This motion was negatived by a large majority.[1])

In 1827 the Roman Catholic question was again brought forward, the settlement of which had now become almost a necessity. George III. had turned out two ministries upon this question. Pitt had been compelled to abandon it on account of the king's unyielding will, and the same question had proved the ruin of Lord Grenville's ministry. The great organization known as the Catholic Association, which had been formed by O'Connell in 1823, now finally compelled parliament to recognize their existence and claims. In 1825 a relief bill was introduced into parliament, and passed the commons by a considerable majority; but by means of the opposition of the duke of York it was rejected in the house of lords. Shortly after this Sir Francis Burdett introduced a resolution that the affairs of Ireland required immediate and earnest attention; but a new election had strength-

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1) Ayes 101, Noes 216 (*Parl. Deb.* 2nd ser. VII. 1266). In 1811 the Prince Regent appointed Dr. Jackson to the bishopric of Oxford against the wishes of Perceval (Buckingham, *Regency*, 1, 172). In 1821 George refused to allow the readmission of Canning into the ministry (Yonge, *Life of Liverpool*, III. 142—150); but a year later, at the intercession of Wellington, he very reluctantly yielded (*Ibid.* III. 194—202). The king took offence at a speech of Denman at the queen's trial, and refused for years to confer upon him the rank of king's counsel (Arnould, *Life of Denman*, I. CXVI.). He also notified his prime minister of his intention to appoint his private secretary Sir Herbert Taylor to a vacant post in the office of the adjutant-general (Wellington, *Dispatches*, 3rd ser. IV. 668—672). In 1829 he filled vacancies in the constableship of Windsor Castle and in the colonelcy of the 1st Life Guards, without informing his minister (Lewis, *Letters*, 394). In 1830 George attempted to exercise the prerogative of mercy in behalf of one Comyn, sentenced to death in Ireland for arson, without taking the advice of his ministers Wellington and Peel; but he subsequently withdrew the order (Wellington, *Dispatches*, Civ. ser. 6, 553—577).

ened the anti-Catholic feeling, and the resolution was lost. In 1828 it became evident to Wellington and Peel that an attempt to settle the question was a lesser evil than to continue to leave it open, and that this could only be effected by the reconquest of Ireland, the repeal of the union, or the emancipation of the Catholics. The chief obstacle to its settlement by emancipation was the attitude of the king. At length in January 1829, the latter consented that the question should be brought before the cabinet. But the very day before the bill was to be introduced into parliament, he sent for Wellington, Lyndhurst and Peel, declared he had been misunderstood, and withdrew his sanction. The ministers at once resigned, but the same night Wellington received a letter, in which the king said that he was convinced of the impossibility of forming another ministry, and begged them to remain. This they agreed to do only on condition that they had his leave to declare that the measure was introduced with his consent.[1]) The proposed bill substituted a new form of oath for the old oaths of supremacy, allegiance and abjuration. If a Catholic bound himself to support the state and not to injure the Church, he could sit in either house of parliament, had a perfect equality with his Protestant neighbours, and was eligible for all offices, civil, military or municipal, with the exception of the office of regent, of lord chancellor, of viceroy of Ireland, or royal commissioner of the general assembly of Scotland. From offices connected with the church, or participation in Church patronage, he was naturally excluded. The Roman Catholic Church was to be left a dissenting community, unendowed and unrestricted, but the use of episcopal titles, the increase of monks, and the introduction of more jesuits was forbidden. The bill passed by a majority of 178 in a house of 452; and was carried in the upper house by 213 to 209. The king now seemed inclined to deny that he had ever authorized his ministers to bring in the bill, and re-

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1) At the suggestion of Peel, the king gave his sanction in writing (*Memoirs of Peel*, I. 343—350).

presented himself as forced to consent by repeated threats of resignation. But Lord Eldon told him that his consent had been given, and that it could not now be withdrawn. The interview closed in the midst of petulant and childish exclamations of anger on the part of the king, but the royal assent was at once given, and the Catholic emancipation bill became law on the 14th of April 1829.

Since the death of George IV., with but few exceptions, and those for the most part unimportant, the exercise of the royal prerogative has been strictly confined within constitutional limits. Under William IV., who was conscientious but weak, the last effort to „be a king“ was unsuccessfully made. A few months after his accession the state of feeling in parliament and in the country had necessitated the retirement of the Wellington administration, and forced upon the king a liberal ministry pledged to the cause of parliamentary reform.[1]) From such a ministry George III. would have very speedily set himself free, and George IV., after giving a doubtful assent to their policy, would have reserved his confidence and sympathies for their opponents. But William IV. took the constitutional course and gave the new administration his confidence. On the first of March 1831, Lord John Russell introduced the first draft of the reform bill, which after a seven nights' debate was admitted to the first reading, but only passed the second by 302 to 301. The parliament, which had been assembled under the influence of the late government, now checked the further progress of the bill. The ministry having been twice defeated in three days, declared that they could do nothing but resign. The king however refused their resignation, and declared his determination to dissolve parliament, which he did in person.[2]) The new house was favourable

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1) Chatham said in 1770, „Before the end of this century, either the Parliament will reform itself from within, or be reformed with a vengeance from without“ (*Parl. Hist.* XVII. 223n). Chatham's words might have proved true had it not been for the terror inspired by the excesses of the French Revolution, whereby political reform in England was retarded for forty years.

2) The king at first expressed a strong wish not to dissolve the house, as the parliament was in its first session, but Lord Wharnecliffe, the leader of the

to reform, and passed the second reform bill by 345 to 239, but in October the lords threw it out by a majority of forty-one. The ministry still having the confidence of the commons, presented a third bill in December 1831, which finally passed the house by a majority of 116. The bill passed the second reading in the house of lords, but its final passage was jeopardized by an amendment of Lyndhurst. The ministers, accordingly, demanded the creation of a sufficient number of new peers to carry the bill. The king refused, and the ministry hereupon resigned. However, after Wellington, to whom the king applied, had vainly endeavoured to form a cabinet, the latter was obliged to have recourse to his former ministry, and agreed to the creation of new peers. But anxious to avoid so extreme a measure, the king addressed a circular letter to the dissentient peers requesting them to refrain from voting, whereupon the bill passed by 106 to 22.[1]) William, though at first opposed to the reform bill, ultimately gave it his support, and it was due to his personal influence that it finally became law. A new creation of peers, had it been necessary, would have been an extraordinary measure and one seldom to be employed, but at the same time it would have been the lawful exercise of an undoubted prerogative.[2]) The interference of the king, on the other hand, with the freedom of the house of lords, though exerted in a popular and worthy cause, was an unconstitutional act.[3]) But it was

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opposition, moved an address to the king, remonstrating against the intended dissolution. This ill-judged piece of violence the king considered as trenching on his prerogative, and he immediately declared his determination to dissolve the house (Lord John Russell, *Memoirs of Fox*, II. 246).

1) William peremptorily declined to give the royal assent in person to the bill, though strongly urged by the ministers to do so (Grey, *Corresp.* II. 462—467; Roebuck, *Whig Ministry*, II. 334).

2) „It was fortunate for the Constitution that the Peers, acting under the sage counsels of the Duke of Wellington, prevented our having recourse to a measure so full of peril. When I [Lord Brougham] went to Windsor with Lord Grey, I had a list of 80 creations, made up of peers' eldest sons, Scotch and Irish peers, and men without families (Brougham, *Works*, XI. 270).

3) A second personal interference of the king occurred in 1834, in a reply to an address for the safety of the Established Church in Ireland (*Ann. Reg.* 1834, 43).

resorted to, not with the intention of augmenting the power of the crown, but for the purpose of restoring harmony in the parliament and in the country.

In 1834 William endeavoured to assert his personal wishes in the choice of a ministry without reference to the will of parliament. The Grey ministry, having lost the confidence of the king on the question of the appropriation of the surplus revenues of the Church in Ireland, had given way to the ministry of Lord Melbourne. Shortly after this, the king, thinking that public opinion was leaving the Whigs and going over to the Tories, and that the transition would be accelerated by a change of ministry, dismissed Melbourne and instructed him to send for Wellington, who took control of affairs until Peel could be summoned from Rome. The Peel-Wellington ministry found itself confronted by a hostile house of commons, and was soon driven to the necessity of dissolving parliament. The elections returned a house more favourable to the existing government, but still gave a considerable majority to the Liberals. In less than two months the ministers were forced to retire and the Melbourne administration was reinstated.[1])

Here again the right of the king to dismiss his ministers, though enjoying the confidence of parliament, is unquestionable; but constitutional usage had prescribed that the right should be exercised solely in the interests of the state. In 1834 there was no ground for dismissing the ministry but the personal wish of the king. Even the grounds which had enabled George III. to rid himself of the coalition ministry and the ministry of „all the talents“ were wanting. In 1783 the ministers were not

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1) Upon the restoration of the Melbourne ministry in 1835, the king stipulated that Lord Brougham should not be replaced in the office of lord chancellor (*Ann. Reg.* 1835, 237). But under William IV. the independent exercise of judgment in matters of prerogative occurred but seldom. He declined to confer a peerage upon Admiral Sir J. Saumarez, though urgently requested by the prime minister, Earl Grey, and only finally consented when he learned of the acute illness the disappointment had caused the old officer (Grey, *Corresp.* I. 339, 350). He also refused a licence to Captain Marryat, permitting him to wear his French order (*Vide* „Memoir“ prefixed to Bohn's ed. of *The Pirate*).

dismissed until they had been defeated in the upper house upon the India bill; and in 1807 they were at issue with the king upon a grave constitutional question before he proceeded to form another ministry. In the time of George III. the influence of the crown, in the event of a dissolution of parliament and an appeal to the country, would certainly have secured a majority for the new administration. But by the experiment of William in 1834-35, — an experiment not likely to be repeated, — the effect of the Reform Act in lessening the influence of the crown was conclusively shown.[1])

In 1839 the ministry of Lord Melbourne, having but slight support, thought it best to resign, and the formation of the new ministry was entrusted to Sir Robert Peel. In submitting the list of his supporters to the queen he informed her that it would be necessary to change some of the chief ladies of her household. Towards the close of the reign of George II. it had become customary to make changes in the household establishment of the sovereign upon a change of ministry,[2]) and since 1812 the offices in the household were included in ministerial changes.[3])

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1) „Throughout its history the House of Commons has had struggles with the Crown, the House of Lords, the Courts of Law, the press, and the people. At one time straining its own powers, at another resisting encroachments upon its just authority: successful in asserting its rights, but failing in its usurpations, it has gradually assumed its proper position in the state — controlling all other powers, but itself controlled and responsible. The more it has been brought under the control of public opinion, — the greater has been its moderation and forbearance. The increased power of the House of Commons under an improved representation has been indisputable. Responsible to the people, it has at the same time wielded the people's strength. No longer subservient to the crown, the ministers and the peerage, it has become the predominant authority in the state. While its authority was uncertain and ill-defined, — while it was struggling against the Crown, jealous of the House of Lords, distrustful of the press, and irresponsible to the people, it was tempted to exceed its constitutional powers; but since its political position has been established it has been less provoked to strain its jurisdiction."

2) *Parl. Deb.* XXIII. 412, 431.

3) When George III. in 1782 dismissed the North ministry he was obliged to substitute for the earl of Hertford, who had been chamberlain for fifteen years, the earl of Effingham, whom he disliked; and Lord Bateman was obliged

The queen, however, consulted the outgoing ministry as to the constitutional necessity of the change, and they advised her that it was not necessary. She thereupon wrote to Peel that „having considered the proposal made by him to remove the ladies of her bedchamber, she could not consent to adopt a course which she considered to be contrary to usage, and which was repugnant to her feelings.“ Peel wrote in answer that his sense of public duty compelled him to adhere to the opinion he had expressed, and that on this condition only would he accept office. The queen again sought advice of her late ministers. A cabinet council was held, and their opinion was thrown into the shape of a formal minute, in which they said that „it was reasonable that the great offices in the Court and situations in the household held by members of Parliament should be included in political arrangements“, but they were „not of opinion that a similar principle should be extended to offices held by ladies in Her Majesty's household.“ [1]) This incident resulted in the restitution of the Whig government, and its maintenance in office till 1841, when it lost the confidence of the house. Sir Robert Peel, his principle touching changes in the household being now admitted, consented to form a ministry.

In 1851 the relations and duties of a secretary of state to the crown, in the transaction of official business, were definitely expressed. Lord Palmerston, foreign secretary, gave an opinion without previously obtaining the consent of the

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to resign his office as master of the buckhounds (Schlosser, IV. 332). „It is become no uncommon spectacle in this country to see men promoted by the King to the highest offices and richest preferments which he has in his power to bestow, who have been distinguished by their opposition to his inclination“ (Paley b. VI. c. 7).

1) „Parliament will never tolerate so monstrous an arrangement for the detriment of the State, as the retaining in high office, about the sovereign's person, the wife or the sister of a leader of opposition. It was their bounden duty to inform the Queen that such a thing is utterly unknown to the Constitution of the kingdom, and utterly repugnant to all its principles“ (Brougham, *Works*, IX. 430, 432); *Parl. Deb.* XLVII. 985, et seq.

sovereign, thus putting himself in the place of the crown. For this violation of duty he was removed from office.[1])

The question was raised in 1856,[2]) whether there existed in the crown the prerogative of creating, without the sanction of the house, an indefinite number of life peerages conferring the right of sitting and voting in parliament.[3]) This question was settled unwisely in the negative in 1869. At that time the queen attempted to make life peers, and the house of lords refused to admit her claim. They said her power had decayed into non-existence; she once had it, they allowed, but it had ceased by long disuse.[4])

Concluding Observations.

After the Norman Conquest all the power of the state was centred in the king. The idea of a Norman parliament, as a successor to the Anglo-Saxon witenagemôte, and forerunner of the modern legislative body, is one to which most of the constitutional writers on English history cling with rare tenacity. They see in the *curia* and *concilium* of the Norman kings, not

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1) „The Queen requires, first, that Lord Palmerston will distinctly state what he proposes in a given case, in order that the Queen may know as distinctly to what she is giving her royal sanction. Secondly, having once given her sanction to such a measure that it be not arbitrarily altered or modified by the minister. Such an act she must consider as failing in sincerity towards the Crown, and justly to be visited by the exercise of her constitutional right of dismissing that Minister. She expects to be kept informed of what passes between him and foreign ministers before important decisions are taken based upon that intercourse; to receive the foreign despatches in good time; and to have the drafts for her approval sent to her in sufficient time to make herself acquainted with their contents before they must be sent off."

2) The Wensleydale peerage.

3) *Parl. Deb.* CXL. 1170—1180.

4) *Parl. Deb.* CXCV. 452 et seq.; CXCVI. 1648 et seq.; CXCVII. 1387—1403. In 1859 the queen differed with the prime minister and the foreign secretary upon a question of foreign policy. The whole cabinet was then appealed to, when the queen's opinion was sustained (Martin, *Prince Consort*, IV. 458, 484, 486).

only a deliberative assembly, but one also possessing legislative and judicial functions. But there is no evidence to show that such was the case, or that there existed prior to Magna Charta an estate of the realm properly speaking.[1])

Under William I., William Rufus, and Henry I., the barons were held in check, and the most rebellious among them forfeited their lands and honours. Under Stephen the nobles broke away, but only to destroy each other by the sword. At the close of this period the original Norman nobility was nearly extinct, and the new nobility which took its place was in a great degree English. Its best men were patriots, and had become the leaders of the people in the struggle for freedom.

To reduce the power of the magnates was a principal aim of Henry II. He took back all the crown lands which Stephen or Matilda had granted in the course of the civil war to the lords who supported them, and he enforced the destruction of all castles built without the king's licence. He weakened yet further the power of the feudal barons by the introduction of *scutagium* (shield money), on payment of which the tenants-in-chief were released from personal military service. Under John the barons again obtained the upper hand, and in June 1215, wrung from the unwilling monarch his consent to the provisions of Magna Charta. This instrument, though intended to secure the people in future from the grievances which they had suffered during the reign, also restored to them some of their ancient rights and privileges. But we shall search in vain in Magna Charta for any article or clause providing for the periodical assembling of the feudal magnates — prelates, earls, barons, — to deliberate upon and deal with the grievances and taxation and other business of the realm. What had become of

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1) *Peers' Rept.* III. 87, 97 et seq., 109 et seq. 254; Gneist, *op. cit.* 205 et seq Allen says „The name, and probably also the constitution of the Anglo-Saxon national assembly, was changed at the coming of the Normans; but its functions remained the same, and continue so in our parliament of to-day" (*Edinb. Rev.* XXXV. 10). Stubbs also leans to the view of a constitutional right on the part of the nobles to assent to acts of legislation (*Const.* I. 276; *Charters*, II. 23).

the ancient national assembly or the „Norman parliament“ [1]) of the English historians? It is plain that the sole right of the king to legislate was left unimpaired by Magna Charta. He was still free to promulgate ordinances, provided they did not infringe the provisions of the charter; and he was only bound to call a council of his tenants-in-chief in the event of an extraordinary aid being required. In the struggle for the observance of the Great Charter the English parliament had its origin.

Edward I. laboured to perfect the institutions of his country, and the English constitution, as we know it, may be said to date from his reign. He saw that a king who could rule with the co-operation of his people would be greater and more powerful than one who ruled without it. Following the precedent set by the great de Montfort, he wrought out a parliament representative of the three estates of the realm; and from his death down to the Reform Act of 1832, parliament has altered but little in outward form, though it has varied vastly in actual power. Thus in the third estate he found a counterpoise to the power of the nobles and clergy. But Edward had not forgotten the barons' war, and he determined to lessen the power of the nobles still further. With this object he instituted the inquiry known as *Quo Warranto?* [2]) Another expedient was the distraint of knighthood; and a third, for the same purpose, was the Statute *Quia Emptores* (1290), which modified the feudal system of tenure. But despite Edward's efforts to conserve and augment the power of the crown, it received in this reign a substantial check. By the confirmation of the charters in 1297, a limit was set to the royal power in matters touching taxation.

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1) „The feudal parliament in arms“, of the permanent feudal *Curia Regis*, or of an estate of the realm formed by „the proud barons of the twelfth century“ (*Peers' Rept.*; Gneist *op. cit.*).

2) Earl Warrenne, when asked to produce his titles to the lands he inherited from his forefathers, unsheathed his sword, and said, „My ancestors came in with William the Bastard and won these lands by the sword, and by the sword I will defend them. William did not conquer for himself alone, nor was it for such an end that my ancestors lent him their assistance.“

The common consent of the realm was now necessary to the imposition of any new tax; and what was more to the point, there was now a constitutional authority, namely the parliament, to see that this condition was observed. In Anglo-Saxon times the royal power had been limited and controlled by three great constitutional principles: First, the king was bound to conduct the executive administration according to the laws of the land; secondly, he could not legislate without the consent of the national assembly; and lastly, he could impose no tax without the consent of that body. After the Conquest these rights of the people were usurped by the Norman king, and came in time to be regarded as prerogatives of the crown. Now, after the lapse of centuries, the right of taxation was again vested in the people, and the crown was shorn of one its prerogatives.

Since the accession of Edward I. the principle of hereditability has been established, and no interregnum is legally recognized in a succession to the throne, save where the line has been broken by change of dynasty.[1]) But the title to the crown in the period following Edward I. had been more than once created by parliament. Henry IV. and his descendants ruled by the will of the people, — they were kings by a parliamentary title. Hence parliament gained a great accession of power under the rulers of the house of Lancaster. But this power was destined to be short-lived. From the accession of Edward IV. the strength of parliament begins to decline, and the strength of the crown begins to revive.

Passing over the period of the Tudors, which has already been dealt with, we find that from the death of Elizabeth to the close of the civil war the parliament made continual encroachments on the prerogative of the crown. „The slavish Parliament of Henry VIII. had grown into the murmuring Parliament of Queen Elizabeth, the mutinous Parliament of James I.,[2])

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1) Howell, *State Trials,* II. 626; Blackstone, I. 196.

2) In the reign of James I. the gentry at length felt themselves strong enough to step into the place of the nobility, who had in the anti-Tudor period guided the constitutional advances of the nation.

and the rebellious Parliament of Charles I. The steps were many but the energy was one — the growth of the English middle-class and its animation under the influence of Protestantism.“ Elizabeth was the central figure of her reign, and in most respects had been the mistress alike of Church and state. In time of war or internal disorder she granted extraordinary powers by ordinances,[1]) and also granted her officers dispensation from existing laws. She directed her parliament to abstain from discoursing of matters of state,[2]) and it was the constant language of the queen and her ministers that that assembly „ought not to deal, to judge or to meddle with her Majesty's prerogative royal.“ [3])

The Stuart kings were destitute of all sense of duty. They were entirely occupied with furthering the interests of their own house. The Church became in their hands an instrument for increasing the royal power, and they were the first who carried on a traffic in judicial offices, peerages, and titles. They possessed little or no capacity for statecraft or military leadership. James I. was pedantic;[4]) Charles I., deceitful, obstinate, and aimless;[5]) Charles II., selfish and dissolute; and James II., bigoted and cruel. Under these kings the royal prerogative was nothing more than an instrument by which to compass the

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1) „And yet there was combined with the prerogative of the Crown the idea of an extraordinary dictatorial power residing in the King, which in any State crisis could thrust aside the self-imposed barriers, laws, and judicial constitution, and find a remedy by extraordinary measures, jurisdiction, and ordinances — an extraordinary power which was made frequent use of by the Tudors, and frequently abused by the Stuarts, and was only in later centuries further restricted and reduced to a minimum“ (Gneist, *op. cit.* 452).

2) D'Ewes, *Journ.* 479.

3) D'Ewes, *Journ.* 645; *Parl. Hist.* I. 765, 783—802. For an account of the conflict between the queen and the parliament in 1566, touching the marriage and succession question, *vide Parl. Hist.* I. 710—716.

4) Called by his admirers „The British Solomon“, and by the Duc de Sully „the wisest fool in Europe“.

5) „I am not without hope,“ he wrote to Digby, „that I shall be enabled to bring either the Presbyterians or the Independents over to my side, that one party may wear the other out, and I be really once more King.“ But Charles's „juristisch-priesterliche“ nature (Ranke, II. 565) had now met its match.

destruction of the rights of parliament and the people. But during the government of the first two Stuarts and the commonwealth, the supreme power in the state was gradually transferred from the crown to the house of commons. The political problem, which had so long foiled its efforts, how to make its will the law of administrative action without itself undertaking the task of administration, was thus drawing nearer to a solution.[1]) After the Restoration no extraordinary legislation was attempted by the council, and encroachments on the part of the executive were much less frequent than under the Tudors. By the abolition of the star chamber[2]) all extraordinary powers of jurisdiction had passed from the king in council to the king in parliament. Thus all the rights and privileges of parliament were more effectually exercised than ever before.[3])

The passing of the Bill of Rights in 1689 restored to the monarchy the character which it had lost under the Tudor and Stuart kings. The right of parliament to depose the king, to change the order of succession, and to choose a new ruler, had again been exercised. All claim to rule by Divine right, or by hereditary right independent of the will of the people, was effectually put an end to by the election of William and Mary. Their title, and that of their successors, to the English throne rested solely on an act of parliament.[4]) But the Bill of Rights did more

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1) Green, III. 336.

2) Stat. 16 Charles I. c. 10.

3) How much power the parliament had gained in the matter of control over the administration, the frequent impeachments and attainders after the Restoration attest. The principle that ministers of the crown, though appointed by the king, were responsible to parliament for their acts and policy was now becoming firmly rooted. At the instance of the commons Stafford was sent to the scaffold, Clarendon died in exile, Danby suffered a long imprisonment in the Tower, and Oxford, Bolingbroke, and Ormond were disgraced and ruined. In 1696 Fenwick, being implicated in a plot for the assassination of the king, was condemned by bill of attainder, being the last person so condemned.

4) William and Mary and Anne were sovereigns solely by virtue of the Bill of Rights (Stat. 1 William and Mary, sess. 2 c. 2); George I. and his successors by virtue of the Act of Settlement (12 and 13 William III. c. 2).

than change the dynasty which sat on the throne. It decided in favour of the people and against the king all the principal questions which had been contested throughout the Stuart period. By the Bill of Rights the prerogative of the crown, the right and privilege of the parliament, and the personal and political liberty of the subject were secured. The constitutional rights of parliament were now out of danger, and, theoretically, at any rate, the house of commons, by its sole right to tax the nation and its resolve to grant none but annual supplies, had become the supreme power in the state.[1]) Practically, however, the supreme power was still vested in the sovereign, and continued to be for nearly a century and a half longer. The rule of parliament was now definitely established, but the mode of exercising that rule parliament had yet to learn. The theory of government, which was a consequence of the triumph at the Revolution, was in the years immediately succeeding that event not understood. The notion of a king with duties ornamental rather than real, had as yet scarcely entered men's minds. The king was still expected to have the direction of the executive, to be in fact his own prime minister, and the effect of this was to make him responsible for the government. The gradual substitution of a parliamentary ministry, which should serve as an intermediate body between the commons and the crown, and save the latter from direct responsibility, is the great constitutional change which was completed on the accession of the house of Hanover.

The able and energetic William of Orange, the greatest statesman of his day, was by no means a nominal sovereign. He was the actual ruler of the people, his own minister of foreign affairs, and his own commander-in-chief. His aim was to be king of the whole nation, not the chief of the party that had placed him on the throne. He desired above all things the cessation of faction and the union of parties; and with this object in view he began by taking the fittest men for ministers

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1) Since 1688 the crown has never attempted to govern without parliament (Todd, *Parl. Gov.* I. 4).

irrespective of their political opinions. But he found by experience that an administration thus composed was weak in itself, and could not command the hearty support of parliament. Acting on the suggestion of Sunderland he finally determined to place himself entirely in the hands of the Whig party. As a result of this there was established in 1696 the first united ministry in English history. It was led by the chiefs of the Whig party, of which the leaders were Somers, Halifax, Russell, and Wharton (known afterwards as the Junto).[1]) William was jealous of his prerogative, and he did not hesitate to refuse his assent to measures which, though they had passed both houses of parliament, failed to meet his approval.[2]) But the parliament supported by the national feeling and prejudices was strong, and the king had to submit to a reduction of the standing army, to the dismissal of his favourite Dutch guards, to the resumption bill, and to a limitation upon his personal expenditure.[3])

Under the vacillating Anne the crown regained much of the personal influence which it had lost through William's unpopularity. William, while ruling in home matters more or less by the advice of his ministers, had not only exercised the power of rejecting bills passed by the two houses, but had kept entirely in his own hands the control of foreign affairs. Marlborough, who appreciated the greatness of William's European schemes,

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1) To Sunderland is due the new ministerial system, i. e. of choosing the ministers of the crown exclusively from among the members of the party which was strongest in the lower house.

2) The right of veto was exercised during the whole reign of William III. In 1692 the king refused his assent to a bill establishing the independence of the judges by law (Burnet, *Hist.* 86). He also rejected the triennial bill of 1692 and the place bill of 1694.

3) After 1694 the only restraint on the press was the law of libel. Under Elizabeth the censorship of the press was vigorously enforced by the privy council (ordinances of 1559, 1585). James I. and Charles I. both kept the press under severe restraint, and the Long Parliament was not more liberal. Soon after the Restoration a law was passed to enforce a censorship of the press, but this expired in 1679. In 1694 the licensing act expired, and was not again renewed.

now stepped into the late king's place so far as directing the foreign policy of the country was concerned. Anne, however, never yielded even to him her exclusive right of dealing with Church preferment, and she presided regularly to the last at the cabinet councils of her ministers. She stated her wishes, and when necessary anticipated opposition by abruptly closing the sitting.[1]) No sovereign since the death of Anne has appeared at a cabinet meeting,[2]) or has ventured to refuse his assent to an act of parliament.[3]) Under William III. the system of coalition or mixed ministries had not proved a success, as thereby the royal authority was not only diminished, but useful legislation was impeded as well; and it was probably Anne's impatience of this system that mainly contributed to place Harley and St. John in the seats of Walpole and Godolphin. It was against the weight of these organized connections, thus „tied and linked" together, that the crown struggled at intervals with varying success from the Revolution of 1688 to the Reform Bill of 1832.[4])

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1) Hardwicke, *State Papers*, II. 482.

2) The custom of the sovereign presiding at meetings of the council is said to have been abandoned about the close of the 14th century. But be this as it may, it was revived by the Tudor and Stuart monarchs, and after the Revolution was a regular practice with William III. and Anne.

3) The royal prerogative of pronouncing a veto was exercised for the last time in May 1707, when the queen refused her assent to the Scotch militia bill (18 *Lords' Journ.* 481, 506; Somerville, *Hist. Anne*, II. 299). Twice within a century acts of parliament have received the royal assent and yet failed to come into operation from neglect of the crown to perform some act which was necessary to give them effect. One of these acts was Bentham's panopticon project passed in 1794 (34 George III. c. 4; 52 George III. c. 144). George disapproved of the plan, and perhaps from his dislike to the author refused to enforce the act (Bentham, *Works*, XI. 102, 106). In 1850 an act was passed under the auspices of Lord Romilly to improve the system of registration of assurances in Ireland (13 and 14 Vict. c. 72). It has, however, never been put in operation. Under the house of Brunswick the power of refusal has never been directly exercised. But it was not likely to be exercised by George I.; George II. would scarcely have ventured to exercise it; and George III. had no occasion.

4) „It is possible that a ministry so tied and linked together (i. e. as Godolphin's) may be apt to act rather as regents than servants, and, consequently, must depress the royal authority." *(Portland Papers).*

The tendencies of George I. were entirely in the direction of absolute government, but for various reasons he learnt to accustom himself to a system of government under which the great William had constantly chafed. Among the causes which contributed to the decline of the personal influence of the sovereign and the power of the crown at his accession was the fact that the Tory party, the *jure divino* party, the party of high prerogative, was opposed to the house of Brunswick and regarded the kings of that house as usurpers. George, not unnaturally, looked for support to the Whig party, the party to which he owed his elevation to the throne, and being ignorant of the language, and without commanding abilities, he was content to entrust the affairs of the kingdom to the leaders of the Whig aristocracy. He retained some voice in matters touching the foreign policy of the country, but in domestic politics he surrendered „everything“ into the hands of his ministers.

Thus under the first English king of the house of Brunswick, as under Edward the Confessor, and the later Merowingians under the dominion of the *majores domus*, the kingship was reduced to a mere shadow of sovereignty. But the writers on English history generally go a step further than this, and employ the same or similar language in speaking of the reign of George II. We read that, „from the accession of the house of Hanover to the accession of George III. the royal authority was reduced to a shadow“; that, „under the two sovereigns who followed Anne the power of the Crown lay absolutely dormant“; that, „the first two Georges had some say touching foreign policy, but in domestic politics they surrendered everything into the hands of their ministers“. Many more passages denoting the impotency of the crown at this period might be cited, but one from Hallam, who is less emphatic than some, but whose language is vigorous enough, will suffice: — „George I. trusted his ministers with the entire management of the kingdom, content to employ its great name for the promotion of his electoral interests. This continued in a less degree to be the case with his son, who though better acquainted with the language and

more jealous of his prerogative, reserved almost his whole attention for the politics of Germany,[1]) . . . so that during the reign of the first two Georges the personal authority of the sovereign seems to have been at the lowest point it has ever reached.“ [2])

Such is the language of most of the writers on this period, but it does not appear to be entirely borne out by the facts. The Hardwicke Papers, the Rutland, Charlemont, Townshend, and Lowther Manuscripts, afford frequent examples of George II.'s active and successful interference in the government of the country. At the beginning of his reign he had intended all his ministers to be of the nature of clerks; they were not to give advice but to receive orders. But he says, „the Queen has subverted all my notions and schemes, and I shall have but one minister and that one Walpole“.[3]) To her he turned over the Church patronage, and it remained chiefly in her hands till her death in 1737. In military affairs George II. was virtually supreme. He would have no one at the head of the army but himself,[4]) and he exercised a direct control over changes and promotions in the service.[5]) To a large extent he was not only the chooser of his ministers, but the director also of all the more important measures propounded by them; and into every political step taken he seems to have entered fully, even to the very details.[6]) „I flatter myself“, writes Henry

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1) Hallam, *Const.* III. 290.
2) Hallam, *Ibid.*, III. 293.
3) Hervey, *Mem.* I. 187.
4) Hervey, *Mem.* III. 101.
5) Viscount Barrington, secretary at war, in a letter to John Manners, marquess of Granby, dated 12th January 1760, writes that „the King has told Lord Ligonier that he would give the cornetcy in the Blues vacant by Captn. Lascelles's promotion to one of his pages named Byng. He insists that cornetcies in the Horse are the proper provision for his pages. . . . I have been obliged to obey“ (Rutland MSS., *l. c.* 12, app. pt. v. 353). Many other letters in this collection testify to the king's control over changes and promotion in the guards and other branches of the service (*vide* pp. 227, 260, 267, 312).
6) Harris, *Hardwicke*, III. 222, 519. George complains that he has been „forced“ and „threatened“ into receiving new men into the ministry, and com-

Fox,[1]) „you will not think me impertinent nor be sorry when I acquaint you, that the King has declared his intention to make me Secretary of State and give me charge of his affairs in the House of Commons.“ According to Waldegrave[2]) George had more knowledge of foreign affairs than most of his ministers.[3])

The correspondence between George II. and Lord Townshend shortly after his accession, shews to what a large extent the king interfered in the details of government,[4]) and how frequently the letters submitted to him for his approval were changed and altered. Under date of February 1729-30, the king writes: „I think with the alteration I have made, this article may pass; but in relation to the succession of Juliers if I should give any promise to the King of Prussia, I shall lose entirely the hopes of getting the four electors of the Palatine family, which will be of much more consequence to me than the other. So it is impossible to flatter him of my being either neutral, or favouring his pretensions.“ The king refused Walpole's request to confer the presidentship of the council on the duke of Devonshire; and he also refused, under any consideration, to make Charles Stanhope a lord of the admiralty.[5]) During the summer of 1740 Walpole was constantly thwarted by the king, and many of the requests of the minister were refused.[6])

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plains to Lord Chancellor Hardwicke that „Ministers are the King in this country“ (Harris, II. 106—109; Coxe, *Life of Pelham,* I. 202; Mahon, *Hist.* III. 280). For George II.'s opinion of English politics, *vide* also Waldegrave, *Mem.* 132, 133.

1) Henry Fox to Mrs. Katherine Lowther, 29th September 1755 (Lowther MSS., *loc. cit.* 13, pt. VII. 128).

2) Waldegrave, *Mem.* 5.

3) „What a strange country is this! I have never known but two or three men in it who understood foreign affairs.“ — George II.

4) Townshend Manuscripts.

5) Coxe, *Mem. of Walpole,* I. 300; cf. also letter from Lord Townshend to Stephen Poyntz, 3rd June 1828.

6) Coxe, *Mem. of Walpole,* I. 623. The king positively refused to appoint Mr. Trevor envoy and plenipotentiary at the Hague in the room of Horace Walpole (Coxe, *Ibid.* 624). He refused to pardon Admiral Byng who was sentenced by court-martial to be shot, though urged to do so by Pitt, Bedford and Lord Temple (Walpole, *Mem.* II. 326).

It was the same during the administration of Pelham. He declined that minister's request to remove the duke of Bedford from his office as secretary of state,[1]) and he dismissed Earl Temple from the ministry in 1757, simply because he „could not stand him.“ [2]) He was strongly averse, says Harris, to making additions to the peerage, and refused to create new peers.[3]) From the letters of Adderley to the earl of Charlemont it appears that the king did not hesitate to interfere in the election of members of parliament.[4])

From the examples cited, and which might easily be multiplied, it is quite evident that George II. played a greater part in English politics than has generally been allowed. He was an arbitrary ruler in a constitutional monarchy. The observations on his character by James, first earl of Charlemont, written shortly after his death, bear out this view. He says, „George II. was a man of strict honour, . . . a friend to liberty, he was yet tenacious of his regal dignity, and his demeanour always preserved that air of conscious superiority so necessary in the first magistrate of a mixed monarchy. Constitutionally brave, he loved and cherished that virtue in others, and preserved all those qualities which usually accompany courage. His temper was warm and impetuous, but he was good-natured and sincere. Unskilled in the royal talent of dissimulation, he was always what he appeared to be. He might offend, but he never deceived.“ [5]) He had a good understanding and clear insight within a certain compass, and was fond of business. He also possessed, says Harris,[6]) great discernment of

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1) Coxe, *Mem. of Pelham,* II. 136.

2) Waldegrave, *Mem.* 107.

3) Harris, *Hardwicke,* III. 519.

4) Adderley writes to Charlemont, 8th April 1755, that the king „interferes in the Armagh election petition“; and in a letter of 15th April 1755, he speaks of „the King intermeddling“ in the election (Charlemont MSS. *loc. cit.* 12, app. x. 212, 215).

5) Charlemont MSS. *loc. cit.* 12, app. x. 13, 14.

6) Harris, *Hardwicke,* III. 222.

character, both as regards the abilities of the men he selected for his ministers, and the degree of confidence he should repose in them; and, according to Hallam, the earlier years of his reign were „the most prosperous season that England has ever experienced.“

George, as a volunteer, had early distinguished himself at Oudenarde. His appearance at the battle of Dettingen, where he acquitted himself with undaunted bravery, „was the last occasion“, says Harris,[1]) „on which a British sovereign graced by his presence the battle field. And it must be admitted that the behaviour of the monarch, in this the closing act of the martial career of the royalty of England, was in all respects worthy of the courage and spirit which had always characterized the arms of this nation in the contest of war.“[2])

George III. was destined to play the first and the last great part in English politics since the accession of the house of Brunswick. He insisted on being the king *de facto* as well as *de jure*, and he succeeded remarkably well. If during the reign of the first George the power of the Whig families had reduced the kingship to a shadow of sovereignty, the third of the name, by his unyielding will and resolution, succeeded in turn in reducing government by parliament almost to a shadow. At his accession the country was governed, according to Walpole, by an oligarchy composed of two hundred noblemen representing the great Whig families. The influence and irresistible power of these „families of the Revolution“ had been upheld by unbounded parliamentary and official corruption, patronage, and

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1) Harris, *Hardwicke*, III. 223.

2) Frederick the Great, in his *Histoire de mon Temps*, gives the following account of George II. at Dettingen: „The King was on horseback, and rode forward to reconnoitre the enemy: his horse frightened at the cannonading, ran away with his Majesty, and nearly carried him into the midst of the French lines: fortunately one of his attendants succeeded in stopping him. George then abandoned his horse, and fought on foot, at the head of his Hanoverian battalions. With his sword drawn, and his body placed in the attitude of a fencing-master who is about to make a lunge in carte, he continued to expose himself, without flinching, to the enemy's fire.“

bribery, with brief intermissions, for nearly seventy years. The first great effort of George III. was to rescue the sovereignty from them, and restore „to the English people the blessings of their old free monarchy.“ [1]) To wrest the power from the Whig aristocracy, however, could only be done effectually by a resolute king, and one capable of asserting his prerogative. Such a king George III. proved to be. Though he failed to annihilate party government, he succeeded in subverting government by the Whig party. In only three years of the fifty active years of his reign was he obliged to endure a ministry thoroughly distasteful to him. In 1765 he was forced to accept Rockingham, but only for a year. When North was driven into retirement in 1782, he was again compelled to accept a united ministry under Rockingham; but this administration would have soon gone to pieces of itself had not the death of the premier in a few months dissolved it. In 1783 George was obliged to accept the coalition, but in eight months he overthrew it, and substituted therefor a ministry led by the greatest statesman of the day, and one on whom he could depend to maintain and uphold the authority of the crown. This administration lasted eighteen years, and, with the single exception of Walpole, no prime minister since Cecil had held office so long. The Grenville ministry of 1806-7, though displeasing to him, the king at first found pliant enough. When, however, they refused to relinquish their constitutional right to offer him advice touching the Catholic concession, he dimissed them.

Though George failed to break down party government, or to restore permanently the supremacy of the crown over the parliament, he succeeded in making the crown the supreme power in the state during his own reign and that of his successor. But it should not be forgotten that the triumph of the policy of the king and Pitt was in great measure due to the influence exerted by the excesses of the French Revolution, which effectually checked all political reform and liberal legis-

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1) Lord Beaconsfield.

lation for nearly forty years.[1]) „The real contest," says May, „was between aristocracy and monarchy and not aristocracy and democracy." And again, he says,[2]) „but it is characteristic of the British Constitution and *a proof of its freedom from the spirit of democracy*, that the more dominant the power of the House of Commons the greater has been its respect for the law, and the more carefully have its acts been restrained within the proper limits of its own jurisdiction." Will any one now maintain that England is anything but a democratic republic ruled under monarchical forms, or that „the spirit of democracy" is inconsistent with respect for the law?

There is sufficient testimony (though scrupulously and systematically overlooked by his numerous detractors) to show that George III. was not the „stiff-necked and bigoted individual of very limited intelligence" of Brougham,[3]) or the „meddling maniac" of Bagehot.[4]) Indeed, it is seriously to be doubted whether a king whose distinguishing qualities were mental dulness and obstinacy could have been the positive factor in the state-system that George certainly was. It is also questionable whether a ruler of commanding intellect and uncommon sagacity, similarly placed, could have accomplished more. He was the first to realize the effect of the stamp act on America, and consented to its repeal.[5]) Eldon, who filled the office of lord chancellor from 1801—1827,[6]) declared that he could not remember having taken the king any state paper of importance „which he did not alter, no one which he did not alter for the better."[7])

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1) „Fly from the French constitution." — Burke.

2) *Const.* II. 83.

3) *Statesmen*, I. 10.

4) *Const.* 87.

5) The king preferred the repeal of the stamp act to enforcing it by the sword; but the policy of modification he would have preferred to either (Walpole, *Mem.* II. 258, 259, 331 n, *Hist.* II. 281; Albemarle, *Rockingham*, I. 269; Massey, *Hist.* I. 211, 212; *Grenville Diary*, etc.).

6) With the exception of the year 1806, when the office was filled by Lord Erskine.

7) Campbell, *Chan.* VII. 253 n.

Even Bagehot says,[1]) „he knew the forms of public business as well or better than any statesman of his time;“ and „if, in addition to his capacity as a man of business and to his industry, he had possessed the higher faculties of a discerning statesman, his influence would have been despotic.“

George III. always exercised a considerable influence independent of that which he exerted through his ministers. His shrewdness and insight into men's motives, his manly courage, his moral and respectable life, his sympathies with the prejudices of the country, and his genuine wish to be a good king, according to the measure of his understanding, all contributed to this end. If he wished to undermine or weaken his ministers, he used this influence against them; if he wished to support and strengthen them, he used it in their favour. But it was a substantial influence, which made itself felt throughout the fifty years of his active reign, and both Fox and Lord Grenville, in their private letters, equally bear testimony to its reality.[2])

Probably no hereditary sovereign, says Harris,[3]) ever did more by his own individual measures to advance the real power and welfare of his country than he. He was patriotic and unselfish.[4]) He extended the colonial possessions. He encouraged science, art,[5]) and literature. His attention was directed to manufactures, and the pursuit of agriculture he not only upheld but studied. The constitutional measure adopted at the commencement of his reign, the establishment of the absolute independence of the judges as regards the crown, originated with him. In these respects he was certainly „a King“ and „a patriot King.“

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1) *Const.* 77.
2) Lewis, *Essays.*
3) *Life of Hardwicke*, III. 228, 229.
4) How little he allowed his own private feelings to interfere with the discharge of his duty is shown in his promotion to the lord chancellorship and advance to a high rank in the peerage of Lord Camden, who not only had decided a case of great public importance against the crown, but had given an adverse decision in a matter where the king himself was personally concerned (Harris, 239, 240).
5) He founded the Royal Academy.

Since the reign of George III. the personal influence of the sovereign in the executive administration has steadily declined. It has however been asserted at intervals with effect. Under George IV. the influence of the crown remained paramount, „yet the remnant of independent kingship may be said to have expired on the day 1829 when he gave his consent to the Bill for Roman Catholic Emancipation.“ [1]) The battle of the constitution had to be fought against the immense resources and unyielding will of George III., and it was only by enlarging the liberties of the people that the influence of the crown was gradually brought under control and into harmony with modern ideas. By the Reform Act and the regulation of the civil list [2]) in the reign of William IV. the chief sources of crown and court influences were finally removed. Since then the policy of the ministers has been directed by parliament and public opinion, and not by the will of the sovereign or the intrigues of the court. The settlement of „the bedchamber question“ in 1841, was the final acknowledgment of constitutional principles; and it is now many years since any question of moment has arisen touching the undue exercise of the royal prerogative or influence of the crown.

The sovereign has no longer the power to reject bills.[3]) It is a fiction of the past to ascribe to him legislative power, for he has long ceased to have any. The ancient theory holds that the king is the executive, but the prime minister is the principal executive of the British constitution, and „the sovereign a cog in the mechanism.“ Theoretically and in form the ministers are still the servants and counsellors of the crown, but

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1) Gladstone, *Gleanings,* I. 38, 78. „While the personal influence of the sovereign in the Government of the country has steadily decreased since the reign of George III., the power of the Crown, as wielded by its ministers, has continued to increase from the Revolution down to the present time.“ Such is the language of Langmead (p. 706), and May puts it even stronger (*Const.* I.). Why continue to call it the power of the crown? Such language is, to say the least, ambiguous.

2) *Vide* Appendix E.

3) „The Queen must sign her own death-warrant if the two Houses unanimously send it up to her“ (Bagehot, *Const.* 57. 58).

in reality they are the servants and advisers of the majority in the house of commons and are responsible to that body alone.[1]) The prime minister was formerly the free choice of the crown. In 1827 Wellington declared that this was the sole act of personal government now exercised by the king,[2]) and in 1845 Peel said: „I offer no opinion as to the choice of a successor, that is almost the only act which is the personal act of the sovereign; it is for the sovereign to determine in whom her confidence shall be placed.“[3]) But this was not strictly true even in Wellington's time. George IV. strove long against Canning's recall to power, and Peel himself could scarcely have been an acceptable person to the queen after „the bedchamber question,“ and yet she felt constrained to invite him to take office in 1841. In 1859, on the overthrow of the Derby ministry, to avoid recurring to Palmerston, her Majesty desired a cabinet with Lord Granville as premier, but she was forced to accept Palmerston.[4])

A few years ago the sovereign objected to the return to office of a former premier, who was personally displeasing to her, but without avail. The prime minister is no longer the free and unbiassed choice of the crown. The sovereign must accept the recognized leader of the predominant party.[5]) When,

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1) It was only in 1739, according to Hallam, that the principle of the irresponsibility of the crown and the responsibility of ministers was for the first time recognized in a public debate (*Middle Ages*, III. 232, note).

2) Torrens, *Melbourne*, I. 233; Colchester, *Diary*, III. 501.

3) *Parl. Dep.* LXXXIII. 1004.

4) In giving the opinion which led to his dismissal in 1851, it should not be forgotten that Lord Palmerston acted not only without the knowledge of the sovereign, but also before consulting his colleagues in the ministry. It should likewise be borne in mind that in controlling one minister the sovereign still acts upon the advice and responsibility of another — her first minister (J. Russell, *Parl. Deb.* CXIX. 91; May, I. 134, 135). The constitutional right of dismissing a minister, asserted in the queen's memorandum of August 1850, on the relations of a secretary of state to the crown, is now practically placed at the disposal of the premier and the cabinet.

5) „The King has incontestibly the privilege to choose his own ministers; excellent delusion! The aristocracy choose them; the heads of that aristocratic party which is the most powerful must come into office whether the King like

however, the predominant party is not agreed who shall lead it, the sovereign may then have a voice in the selection. Experience has shown that the power of dismissing a government with which parliament is satisfied, and of dissolving that parliament upon an appeal to the people, is not a power which the king will again be likely to exercise,[1]) and it may be said to have dropped out of the reality of the English constitution.

The present influence of the sovereign is moral, and „it operates," says Gladstone, „through the will and reason of the ministry, not over or against them. It would be an evil and a perilous day for the Monarchy were any prospective possessor of the Crown to assume a claim for himself final, or preponderating, or even independent power, in any one department of the State." The duties of the sovereign are now formal and ornamental, and the few prerogative-rights still remaining to the crown are only exercised under the advice of a ministry possessing the confidence of a majority in the house of commons.[2]) The crown has been shorn of its ancient prerogatives, and the king has long ceased either to rule or to govern, and must be content to reign. But what the crown has lost in power and influence, it has gained in security and peace.

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it or not" (Bulwer, *England and the English*). Elsewhere Bulwer says, „The King cannot form a cabinet out of men unknown to the aristocracy, but he enjoys the prerogative of seeing two parties fight and of *crowning the victor*". The actual exercise of the prerogative then consists in „crowning the victor".

1) Last exercised in 1834—35 by William IV.

2) „His habits and tastes are always matters of notoriety, and often of imitation. Access to his society is always coveted. He may give that access in a manner useful, or mischievous, or absolutely indifferent. He may call to his court those who are most distinguished by genius or by knowledge; or those whose only merit is their birth or their station; or parasites, buffoons, or profligates. Even in the appointment of ministers, he may sometimes exercise a sort of selection. He is sometimes able to delay, for a short period, the fall of those whom he likes, and the accession of those whom he dislikes, and he can sometimes permanently exclude an individual" (Brougham, *Political Philosophy*).

Appendix A. (p. 4, 37.)

Such then, according to the highest legal authorities, are the sovereign and transcendent attributes of the English king. But we have constantly to distinguish between the real king and the ideal king; the real prerogative and the ideal prerogative; between the king who really does nothing and the king who nominally does everthing. Only in this way is it possible to reconcile the contradictory assertions of the various writers on English constitutional law.

„By the word *prerogative,*“ says Blackstone, „we usually understand that special pre-eminence which the king hath over and above all other persons, and out of the ordinary course of the common law, in right of his royal dignity. It signifies, in its etymology (from *prae* and *rogo*), something that is required or demanded before, or in preference to, all others“ (*Com.* I. 239). According to Stephen, the royal prerogative is usually exercised by delegation (*Com.* II. 473).

The theoretical extent of the royal prerogative (*vide* Blackstone, I. 237—281) may be briefly shown as follows: (1) The sovereign is the representative of the state towards foreign powers, and has the sole power of sending ambassadors to foreign states and receiving ambassadors at home. (2) It is also the sovereign's prerogative to make international treaties, and to decide as to war and peace; (3) he has the prerogative of rejecting provisions of parliament;[1]) (4) he has the

1) „The sovereign is a constituent part of the supreme legislative power; and, as such, has the prerogative of rejecting such provisions in Parliament as he judges improper to be passed“ (Stephen, *Com.* II. 504).

military command over every branch of the armed force; (5) he is the fountain of justice, with the rights of appointment that flow therefrom; (6) he is the supreme guardian of the peace; (7) he is the source of honour, of office, and of privilege (here he is the parent of them, but not the parent in 5); (8) he is the arbiter of commerce;[1]) (9) he is the head and supreme governor of the established Church.

We are taught by Blackstone, that the law ascribes „to the King sovereignty or pre-eminence“;[2]) though we had been previously told, that the legislative and of course the supreme and absolute authority of the state is vested in parliament.“[3]) Thus in legal conception the ideal king is supreme; but in practice „the power of parliament is absolute and without control. It hath sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving, and expounding of laws, concerning matters of all possible denomination, ecclesiastical or temporal, civil, military or criminal; this being the place where that absolute, despotic power, which must in all governments reside somewhere, is entrusted by the constitution of these kingdoms.“[4]) Thus, from the foregoing passages we are forced to the conclusion that it is to the king in his ideal capacity, and not to the real king, that unqualified sovereignty is ascribed.

We are further taught, that no one born in any part of the king's dominions, and within his protection, can by any act of his own renounce his allegiance.[5]) But notwithstanding this language we are told, „that resistance to the person of the King is justifiable, when by his misgovernment of the kingdom the existence of the state is endangered, and the public safety

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1) „First, the establishment of public marts. Secondly, the regulation of weights and measures. Thirdly, money to give it authority or make it current“ (Stephen, II. 492—536).

2) Blackstone, I. 241.

3) *Ibid.* I. 147.

4) *Ibid.* I. 160, 162.

5) Bacon's *Abridgment*, *Praerog.* C. I.

proclaims such resistance necessary.“ [1]) We must leave „to future generations, whenever necessity and the safety of the whole shall require it, the exertion of those inherent (though latent) powers of society, which no climate, no time, no constitution, no contract, can ever destroy or diminish.“ [2])

By a fiction of the law all justice is said to emanate from the king. All jurisdiction is exercised in his name, and all subordinate magistrates derive their authority from his commission. No action can be raised against him. No one can summon him to appear in a court of justice. „Who,“ exclaims Finch, „shall command the King?[3]) But before the reign of Edward I. the king might have been sued as a common person;[4]) so at any rate it is stated in the Year Books of the time of Edward III.[5]) Staundforde,[6]) however, who wrote on the prerogative in the reign of Elizabeth, doubts whether a subject could ever have maintained such an action against the king; because Bracton,[7]) who lived in the time of Henry III., states there is no remedy by assize against the king, who has no superior but God. We find here again the same confusion of language and seeming contradiction of thought as appear in the later writers on constitutional law. In another part of his book Bracton asserts, „that the King has not only a superior in the law, which made him King, but in his court composed of his earls and barons, who have a right to put a bridle in his mouth, should he be without bridle, that is, without law.“ [8]) The same language

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1) Blackstone I. 245, 251. In Castile if the king attempted ought to his own dishonour, or the prejudice of his kingdom, his subjects were entitled and even required by law to resist his will, and remove evil counsellors from his person (Partidas pt. 2. t. 13. 1. 25; Allen, *Prerog.* 87).

2) Blackstone, I. 245, 251.

3) *Ibid.* I. 242. „In the exertion of lawful prerogative the sovereign is and ought to be absolute. The king hath a prerogative in all things that are not injurious to the subject“ (Finch. L. 84. 85).

4) Comyn, *Digest. Action.* C. I.

5) One of the judges asserts that he has seen a writ beginning with these words: „*Praecipe Henrico, regi Angliae*“ (Allen, *Prerog.* 96).

6) *Exposition of the King's Praerog.* C. 15, f. 42.

7) *L.* IV. C. 10, f. 171 b.

8) *L.* II. c. 16. § 3, f. 34.

is repeated in Fleta. „The King," says the author of that treatise, „has in the government of his people a superior in the law which made him King, and a superior in his court, that is to say, in his earls and barons".[1])

When the lords tacked to the Petition of Right a clause subversive of its object; when they proposed as an addition to that statute a declaration, that it was tendered to his Majesty „with due regard to leave entire that sovereign power with which he was entrusted for the protection, safety, and happiness of his people;" Sir Thomas Wentworth, afterwards earl of Strafford, replied, „If we admit of this addition, we shall leave the subject worse than we found him. Let us leave all power to his Majesty to punish malefactors; but these laws are not acquainted with sovereign power." „Prerogative," says the illustrious Coke, „is part of the law; but sovereign power is no parliamentary word. Magna Charta and all our statutes are absolute, without any saving of sovereign power. Let us take heed what we yield unto. Magna Charta is such a fellow that he will have no sovereign." „I know," said Pym, „how to add sovereign to the King's person, but not to his power. We cannot *leave* to him a sovereign power; for he was never possessed of it."[2])

B. (p. 4.)

The king is held in law to be the source or fountain of honour as well as of justice, and he possesses in fact the sole power of dispensing honours and dignities.[3]) This prerogative it appears, he shared like others, in former ages, with his subjects. In times of chivalry knighthood was the rank most highly

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1) *L.* I. c. 17. § 9. The king of Spain could be sued by any of his subjects in his courts of law (Marina, *Ensayo Historico critico,* § 47, 53. *Vide* also Matthew Paris, 1236 [edit. 1640], 421; Allen, 98).

2) *Parl. Hist.* II. 357, 358.

3) Blackstone, I. 171.

esteemed and most eagerly coveted and sought after. But this honour, it was in the power of any private person, who was himself a knight, to bestow. It was not till a period comparatively modern, that the right to confer the honour of knighthood was vested exclusively in the crown.[1])

C. (p. 6.)

It was decided by the courtly spirit of the judges in the reign of James I. that allegiance is due to the king in his natural capacity (i. e. to his person)[2],) and not in his politic or ideal capacity. But this anomaly in the constitution, which was calculated to subvert every principle of liberty, by denying all right of resistance, was fated to enjoy a short-lived triumph. In 1642 the two houses of parliament declared the sounder principles of the monarchy,[3]) but pushed them to a fatal excess. They assumed to themselves the supreme power of the state, retaining nothing of monarchy but the name. What they accomplished was the reverse of what had been attempted by lawyers and churchmen, when they bestowed on the kings of the Barbarians all the rights and pretensions of the Roman emperors. In the one case despotism was established under a semblance of law; in the other, a republic was constituted in fact.[4]) The Restoration abrogated this declaration, and put the prerogative on the basis of passive obedience. The Revolution, founded upon the right of resistance, once more expunged this doctrine from the statute book.[5])

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1) Allen, 125.

2) Even Coke so held: allegiance is „tyed to the body natural of the King and not to his body politick" (Howell, *State Trials*, II. 566—570; *Lords' Journ.* 24th Feb. 1606-7).

3) Rushworth, IV. 551; *Comm. Journ.* 5th and 6th June 1642; *Lords' Journ.* 6th June 1642.

4) Allen, 83, 84.

5) Blackstone, I. 245, 251.

D. (p. 47.)

The succession to the crown is in general hereditary, but the right of inheritance may be changed or limited by act of parliament. The hereditary right is not indefeasible.[1])

„The Crown in England is hereditary by the common law of the land. While I speak of a hereditary, I by no means intend a *jure divino* title to the throne.“ [2])

The Revolutionary arrangement, grounded entirely upon the will of the people in a state of resistance to their hereditary rulers, is the whole foundation of the title by which the house of Brunswick now enjoys the crown. It is a rare fortune, and peculiar to England, that we have a family on the throne who have no legitimate pretensions to the crown but what they derive from parliament. The Act of Settlement which is the sole foundation of their title, has cut off all obsolete claims, whether derived from Ecgberht or from the Conqueror.[3])

E. (p. 98.)

It became a maxim of English law, that all lands and tenements possessed by the king, belong to him in right of his crown, and descend with it to his successor. By the adoption of this principle the king was restrained from making bequests of landed property by will, but he still retained the power of giving away lands of the crown in his life-time.[4]) That this power was abused it is needless to say. The rapacity of favourites and prodigality of the court led parliament

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1) 1 Elizab. c. 3, sess. 1; 1 William and Mary, sess. 2, c. 2; 12 and 13 William III. c. 2.

2) Blackstone, I. 209. „That the Crown is, by common law and constitutional custom, hereditary; and this in a manner peculiar to itself; but that the right of inheritance may from time to time be changed or limited by Act of Parliament; under which limitations the Crown still continues hereditary“ (Blackstone, I. 191).

3) Blackstone, I. 217; also Allen, *loc. cit.*

4) Comyn, *Digest. Prerog.* d. 64, 88.

frequently to interfere, and at length an effectual remedy for the evil was accomplished by a statute of Queen Anne,[1]) which restrained the power of alienation to grants for three lives, or 31 years. The little that remained of the ancient possessions of the state was thus secured from further dilapidation. In the reign of George III., the ancient Anglo-Saxon scheme was restored, the crown lands being again vested in the public,[2]) while the king obtained the right of acquiring landed property by purchase, and of devising it by will.[3])

It was at the Revolution that a limitation was for the first time imposed upon the personal expenditure of the sovereign. The annual revenue of Charles II., from all sources, was £ 1,200,000, and this was fixed by parliament as the ordinary revenue of the crown. The revenue of James II. amounted to £ 1,900,000 a year, out of which the king was expected in time of peace to support the royal dignity and civil government, and also the public defence; but whatever remained was at the king's disposal[4].) At the accession of William and Mary, however, parliament fixed the annual revenue of the crown in time of peace, at £ 1,200,000, of which about £ 700,000 (derived from the hereditary revenues of the crown, and from a part of the excise duties) was separately appropriated to what was afterwards called the king's civil list, comprising the personal expenses of the king, the support of the royal household, and also the payment of civil offices and pensions, which were more fairly chargeable to the remaining portion of the crown revenue devoted to the strictly public expenditure of the state.[5]) On the accession of Anne the land revenue was no longer sufficient for the support of the crown, having been impaired by former kings and queens. It was now determined that the king's regular and domestic expenses should be restricted to a fixed

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1) 1 Anne, c. 7.
2) 1 George III. c. 1.
3) 39 and 40 George III. c. 88.
4) *Parl. Hist.* v. 151; Hallam, *Const.* II. 279.
5) *Parl. Hist.* v. 193; *Comm. Journ.* x. 438.

annual sum distinct from the other departments of public expenditure, and this principle was adhered to in the next reign.[1]) At the accession of George II. the civil list was increased from £ 700,000 to £ 800,000. Under George III. parliament first acquired the direct control of the personal expenses of the king, who, for an annual sum of £ 800,000, surrendered to the nation his life interest in the hereditary revenues.[2]) In 1777 the civil list was increased to £ 900,000, „for the support of his household, and the honour and dignity of the crown." George III. also enjoyed considerable further income from other sources, but in spite of this he was compelled to make repeated application to the nation for the payment of debts upon the civil list. The arrears paid off during his reign amounted to £ 3,398,000.[4]) George IV. received £ 845,727, also the hereditary revenues of Scotland, £ 109,000, the civil list for Ireland, £ 250,000, and from other sources.[5]) William IV. surrendered all these sources of revenue, and received in return a civil list of £ 510,000 with removal of civil charges (£ 75,000 pension list). The civil list of the present sovereign is fixed at £ 385,000 (£ 1,200 pensions).[6]) In the last three reigns parliament has not been asked to discharge debts.[7])

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1) 1 George I. c. 1.

2) 1 George III. c. 1.

3) *Parl. Hist.* XIX. 227.

4) *Rept. Civil List, 1815,* 4; *Parl. Deb.* XXXIX. 144; May, I. 243. The personal frugality of George III. was great. His debts were due to his struggle to establish the ascendency of the crown, by systematic bribery of members of parliament with places and pensions, and direct gifts of money. Between 1769 and 1777 nearly £ 600,000 had been spent in secret service. At the time the civil list was increased there was a strong expression, on the part of Sir Fletcher Norton, of the feeling of the house, that under the existing pressure of taxation such extravagant use of public money was much to be blamed, — words which were subsequently formally accepted by the house as their own. Both Anne and George I. incurred debts, the former £ 1,200,000, the latter £ 1,000,000.

5) 1 George IV. c. 1; *Rept. Civil Gov. Charges, 1831.*

6) *Parl. Deb.* XXXIX. 137 et seq.

7) *Rept. Civil List, 1838.*

Lebenslauf.

Geboren wurde ich, Frederick Tuckerman, Sohn von Frederick Goddard Tuckerman, Juristen und Schriftsteller, und seiner Ehefrau Hannah geb. Jones, am 7. Mai 1857 zu Greenfield in Massachusetts. Nachdem ich den ersten Unterricht in der Privatschule meines Heimatstädtchens empfangen hatte, besuchte ich von Herbst 1869 bis Sommer 1873 die S. Mark's Schule zu Southborough in Mass. Vom Herbst 1874 bis Sommer 1878 besuchte ich das Staats-Collegium zu Amherst nnd die Universität Boston, wo ich im Jahre 1878 den Grad Scientiae Baccalaurei erwarb. Von Herbst 1879 bis Sommer 1882 widmete ich mich in der Harvard Universität dem Studium der Medicin, und im Jahre 1882 erwarb ich den Doctorgrad. Während 1882 und 1883 studierte ich in London und Berlin. Michaelis 1892 bis Ostern 1893 studierte ich an der Universität zu Berlin Geschichte und englische Litteratur und von Ostern 1893 bis Ende Sommer-Semester 1894 desgleichen an der Universität zu Heidelberg. Vorlesungen hörte ich der Herren Professoren: Curtius, Koepp, Marcks, Meinardus, E. Schmidt, Sternfeld, v. Treitschke, Wagner in Berlin; Erdmannsdörffer, Ihne, Kleinschmidt, Schick, Winkelmann in Heidelberg.

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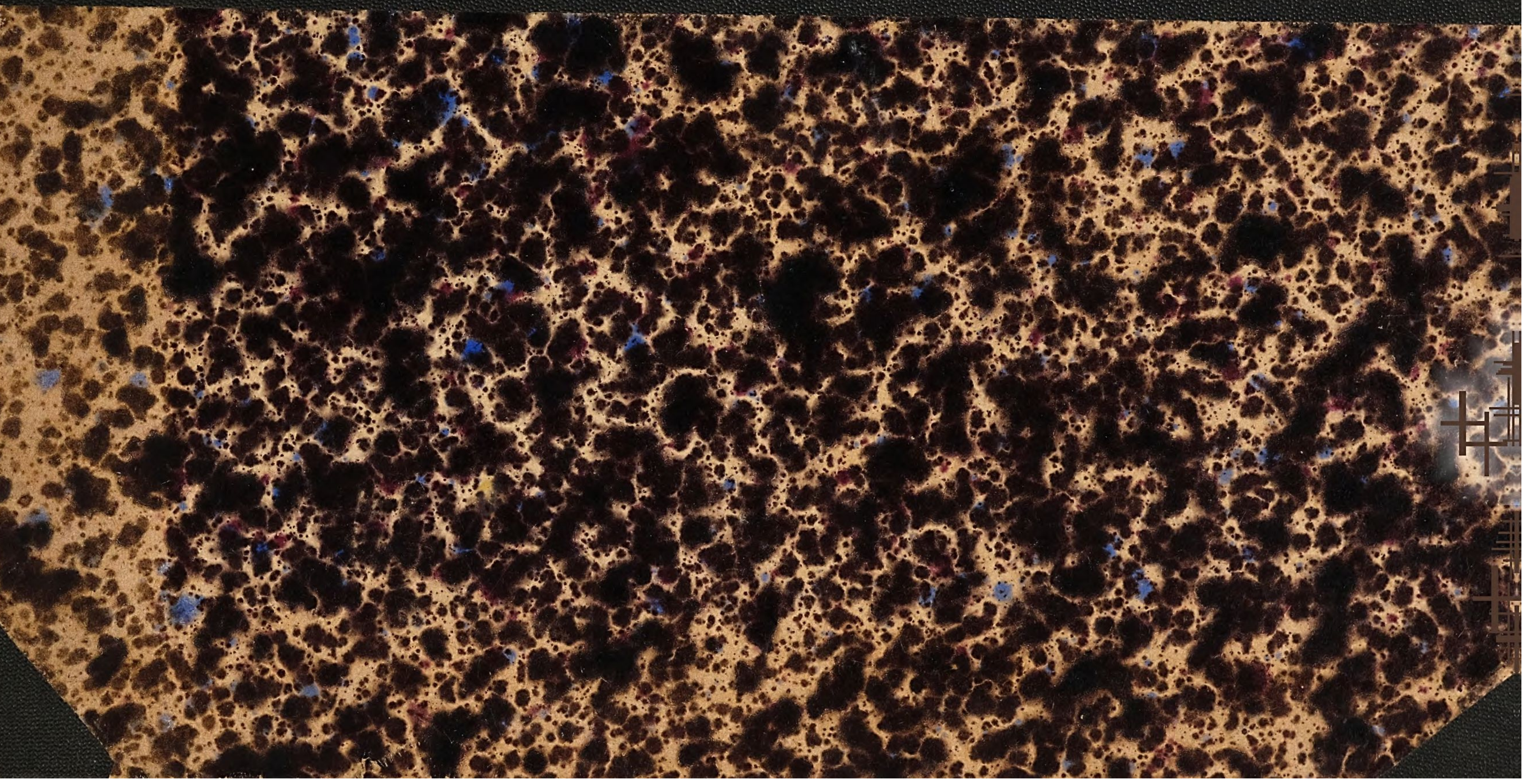

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Tuckerman, Frederick

Upon the royal prerogative in England especially since the accession of the house of Brunswick

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